SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA, PETITIONER

vs.

HAROLD T. LINDSAY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

Proceedings in the U. S. C. A. for the First Circuit.	Original	Print
Caption	1	1
Record from the U. S. D. C. for the District of Massachusetts	1	1
Complaint	1	1
Plaintiff's Exhibit "A"—Copy of Wool Handler's Agreement No. 5 dated April 20, 1944, and supplement dated May 9, 1944	6	4
Plaintiff's Exhibit "B"—Bond dated July 14, 1944	33	24
Motion to dismiss by defendant, Harold T. Lindsay	37	26
Motion to dismiss by defendant, Draper & Company, Inc.	37	27
Motion by defendants, Peerless Casualty Co., United Pacific Insurance Co., and General Casualty Co. of America to extend the time of pleading	38	27
Motion to dismiss by defendants, Peerless Casualty Co., United Pacific Insurance Co., and General Casualty Co. of America	39	28
Judgment of dismissal	40	28
Memorandum opinion, Sweeney, J	40	29
Notice of appeal	43	31
Statement of points	43	31
Designation of record (omitted in printing)	44	31
Clerk's memorandum re enlargement of time	44	31
Clerk's certificate (omitted in printing)	45	31
Caption	47	33
Opinion, Woodbury, J	47	33
Judgment	50	38
Clerk's certificate	50	38
Order granting certiorari	53	39

1 UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

October Term, 1952

UNITED STATES OF AMERICA, PLAINTIFF, APPELLANT

v.

HAROLD T. LINDSAY ET AL., DEFENDANTS, APPELLEES

RECORD ON APPEAL

No. 52-220 Civil Action

UNITED STATES OF AMERICA, PLAINTIFF

v.

HAROLD T. LINDSAY, PEERLESS CASUALTY COMPANY, UNITED PACIFIC INSURANCE COMPANY, GENERAL CASUALTY COMPANY OF AMERICA, AND DRAPER & COMPANY, INC., DEFENDANTS

Appeal of the United States of America as Plaintiff From Judgment of Dismissal (Sweeney, Ch. J.), Entered April 29, 1952

IN UNITED STATES DISTRICT COURT

Complaint—Filed February 29, 1952

The United States of America, plaintiff, by George F. Garrity, United States Attorney for the District of Massa-
2 chusetts, acting under the direction of the Attorney General of the United States, alleges that:

FIRST COUNT

I

This is an action brought by the United States of America based on a claim of Commodity Credit Corporation, a wholly-owned agency of the United States, created by the Commodity Credit Corporation Charter Act, 15 U. S. C. Supp., 714. The court has jurisdiction under Section 4 (c) of said act, 15 U. S. C. Supp., 714b (c). The aforesaid agency is successor in interest to the wholly-owned agency of the same name previously chartered under Delaware law. The claims of the Delaware charter corporation (hereinafter referred to as "Commodity") were transferred to the Federally-chartered corporation by Section 16 of the act aforesaid, 15 U. S. C. Supp., 714n.

II

The defendant, Harold T. Lindsay, is a resident of Boston, Massachusetts, within the jurisdiction of this Court.

III

The defendant, Draper and Company, Inc., warehouseman, is a corporation organized and existing under the laws of the State of Massachusetts, within the jurisdiction of this Court.

IV

The defendant, Peerless Casualty Company, is a corporation organized and existing under the laws of the State of New Hampshire, with a branch office and resident agent in Boston, Massachusetts, within the jurisdiction of this Court.

V

The defendant, United Pacific Insurance Company, is a corporation organized and existing under the laws of the State
3 of Washington, with a branch office and resident agent in Boston, Massachusetts, within the jurisdiction of this Court.

VI

The defendant, General Casualty Company of America, is a corporation organized and existing under the laws of the State of Washington, with a branch office and resident agent in Boston, Massachusetts, within the jurisdiction of this Court.

VII

The purpose of this action is to recover from Harold T. Lindsay (hereinafter referred to as "handler"), Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, the handler's sureties, and from Draper and Company, Inc., for damage to wool owned by Commodity and stored in the Draper and Company warehouse.

VIII

The defendant handler, entered into a Wool Handler's Agreement with Commodity to purchase, handle, store, and sell domestic wool for the account of Commodity under the 1941 Wool Purchase Program. A true and correct copy of said contract with amendments thereto is attached hereto as part hereof, and marked Plaintiff's Exhibit "A".

IX

To secure the performance of the Wool Handler's Agreement aforesaid, the defendant handler, as principal, and the defendants, Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, as sureties, executed on July 14, 1942, and delivered to Commodity, a bond in the amount of $200,000.00 to secure the performance and discharge of all undertakings by the handler under or in connection with the agreements which the handler had entered into or thereafter might enter into from time to time with Commodity, of which amount, Peerless Casualty Company was surety in the amount of $100,000.00, United Pacific Insurance Company was surety in the amount of $50,000.00, and General Casualty Company of America was surety in the amount of $50,000.00. A true and correct copy of the bond and of the endorsement thereon is attached hereto as part hereof, marked Plaintiff's Exhibit "B".

X

Pursuant to the Wool Handler's Agreement aforesaid, the defendant handler held in his custody wool acquired and stored for the account of Commodity. When acquired the wool was in a good and undamaged condition. Under the terms of the Wool Handler's Agreement aforesaid, the defendant handler was obligated to provide proper storage for the wool and to take such action as necessary to keep the wool in good condition. In violation of said Wool Handler's Agreement on or about February 26, 1943, 17,248 pounds of said domestic wool in grease were returned to Commodity in a wet and damaged condition. The damages to said wool were caused by the failure of the defendant handler to perform his obligations under the terms of the contract, as amended, to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition.

In consequence, of the defendant handler's failure to carry out the terms of said contract, Commodity has suffered loss in the amount of $1,127.03, being the amount of damage sustained by the wool.

WHEREFORE, plaintiff demands judgment against the defendant, Harold T. Lindsay, and his sureties, Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, for $1,127.03, with interest and costs.

5 SECOND COUNT

I

Each and every allegation contained in paragraphs I, II, and III of the First Count of this complaint is, by this reference, incorporated in this count and made a part hereof as though said allegations were set forth in full herein.

II

During 1944, various quantities of wool belonging to Commodity were delivered for storage to the defendant, Draper and Company, Inc. by the wool handler, Harold T. Lindsay. When delivered to the defendant, Draper and Company, Inc., the wool was in a good and undamaged condition. On or about February 26, 1945, 17,245 pounds of the wool were returned to Commodity in a wet and damaged condition.

III

In consequence of the damage to said wool while in the custody of Draper and Company, Inc., Commodity has suffered loss in the amount of $1,127.03, being the amount of damage sustained by the wool.

WHEREFORE, plaintiff demands judgment against the defendant, Draper and Company, Inc., for $1,127.03, with interest and costs.

GEORGE F. GARRITY,
United States Attorney.

By: (s) STANLEY W. WISNIEWSKI,
Asst. United States Attorney.

6 PLAINTIFF'S EXHIBIT A TO COMPLAINT

Conformed Copy

For Handlers of California
Processing Wools

SUPPLEMENT TO WOOL HANDLER'S AGREEMENT No. 5

(Shorn Wool)

THIS AGREEMENT made and entered into by and between Commodity Credit Corporation (hereinafter called "Commodity") and Harold T. Lindsay* (hereinafter called the "Handler") is in supplement to and in amendment of the Wool Handler's Agreement (1944) dated April 20th, 1944, entered into between the parties hereto.

In addition to the covenants and agreements contained in the Wool Handler's Agreement aforesaid, It Is Hereby Agreed as follows:

1. All California defective, scouring and/or carbonizing type wools purchased for the account of Commodity under the Handler's Agreement aforesaid shall be scoured and/or carbonized before the wool is appraised.

2. In the case of such wools so scoured or carbonized, unless a deduction for scouring service has been made from the appraisal value of the wool in computing the purchase price pursuant to paragraph 7 (f) of the Handler's Agreement, there shall be deducted, in addition to the other deductions specified in the Handler's Agreement, an additional handling charge of one and one-half (1½) cents per pound of grease wool to cover the additional expense involved in handling this type of wool.

3. The amount to be paid the producers, pools, or secondary handlers, grease basis, for a line of wool so scoured or carbonized, shall be pro-rated among them on the basis of the quantity of wool each has in the line and on the basis of the length, quality (grade), shrinkage, and extent of the defect in such wool as determined by the Handler before scouring or carbonizing.

The Handler shall furnish Commodity with copies of his determination with respect to each such individual lot of wool.

4. Commodity shall pay the Handler, in addition to the other sums payable to the Handler under the Handler's Agreement, an amount equal to the amount, if any, deducted from the appraised value of the wool under paragraph 2 above, in computing the purchase price.

In witness whereof, the parties hereto have executed this supplement on this 9th day of May, 1944.

Attest:

COMMODITY CREDIT CORPORATION,
By (s) G. E. RATHBUN,
Vice President.

ZELMA DAVIS,
Assistant Secretary.

Attest:

HAROLD T. LINDSAY,*
(Handler)

RICHARD D. CRAIG,
Notary Public.
My Commission Expires Feb. 9, 1951.

By (s) HAROLD T. LINDSAY,
Partner
(Title)
*49 Melcher Street
Boston, Massachusetts.

[illegible]

Duplicate Copy

War Food Administration [illegible] Agreement No. [illegible]
Commodity Credit Corporation
Wool Form 2 (1944)

Wool Handler's Agreement

(Shorn Wool)

This Agreement, [illegible] by and between Commodity Credit Corporation, [illegible] Handler"). [illegible]

Whereas, [illegible] the market for domestic wool [illegible] availability of wool [illegible] Commodity desires to purchase domestic wool; and

Whereas, [illegible]

Now, Therefore, [illegible] the parties hereto agree as follows:

[illegible]

1. General Obligations of Handler. The Handler, subject to the terms and conditions hereinafter set forth, and during the period of operation of this agreement, (a) [illegible] Commodity [illegible] Handler may [illegible] 1,000 pounds [illegible] hereunder, (b) [illegible] and (c) shall be [illegible] to Commodity of all proceeds received from the sale thereof.

2. Dollar and Poundage Commitment. The aggregate quantity of wool to be purchased by the Handler hereunder shall not exceed 2,000,000 pounds, grease weight, and the aggregate
9 appraisal value thereof shall not exceed Eight Hundred

[illegible]

[illegible] of Wool

4. Grading. (a) If the Handler or the Appraisal Committee determines that any lot of wool received by the Handler hereunder should be graded, the Handler shall provide for such grading at a charge of not to exceed three-fourths (3/4) of a cent per grease pound.

(b) If the Appraisal Committee determines that any wool has been improperly graded, it may require the Handler to regrade [illegible] at no further expense to the consignor of such wool. The expense of such regrading shall be borne by the Handler.

5. Scouring and Carbonizing. Wool purchased hereunder may be scoured and/or carbonized before appraisal if the Handler determines that such wool should be scoured or carbonized. [illegible] shall be scoured and/or carbonized [illegible].

6. Advance Payments to Growers. If, in the case of wool in the original bag which requires grading, or wool which requires scouring or carbonizing, a producer, pool, or secondary handler desires an advance payment in advance of the appraisal of the wool, the Handler shall make to such producer, pool, or secondary handler an advance payment in the following amount:

(1) In the case of wool which is to be graded, seventy-five (75) percent of the estimated appraised value.

(2) In the case of wool which is to be scoured or carbonized, sixty (60) percent of the estimated appraised value.

The estimated appraised value [illegible] shall be determined by the Handler [illegible] which is to be graded [illegible]. Commodity shall reimburse the Handler for the advance payments made hereunder upon presentation by the Handler to Commodity or to the Bank of (1) a request for payment in form approved by Commodity, (2) warehouse receipts representing the wool, and (3) a certificate stating the estimated value of the wool. In case such documents are submitted to the Bank, a copy of the request for payment and of the certificate stating the estimated value of the wool shall be transmitted by the Handler to Commodity at Wash-

[illegible] of the advance payment for which [illegible] the wool [illegible] shall pay to Commodity the [illegible] by him, and [illegible] by the Appraisal Committee, shall [illegible] Commodity a refund of the same [illegible].

[illegible] All purchases hereunder shall be on the basis of the Appraisal Committee's Certificate, or the Appeal Committee's Certificate, if any, and (except in the case of free [illegible] weights of the warehouse in which [illegible] original bag weight, or the weight [illegible] Provided, however, [illegible] wool received in a wet condition such weights [illegible] until the wool has been properly dried. [illegible] the purchase shall be on the basis [illegible] not more than 90 days [illegible].

[illegible] The purchase price of wool, [illegible] that [illegible] 1943, the effective date of the [illegible] issued by the War Food Administration, received by the Handler for purchase by Commodity hereunder, shall, except as provided in paragraphs 6 and 9, be the appraised value thereof [illegible] grease, scoured, or carbonized basis, as the case may be, depending upon the state of the wool when appraised, less the deductions provided in this paragraph.

Appraised Value

The appraised value of the wool shall be determined by the Appraisal Committee except that in the case of wool destroyed or damaged after its receipt in the Handler's warehouse but before it is appraised, the value of the wool or the extent of the damage shall be determined by a special committee consisting of a representative of the Handler, [illegible] of the Chief Appraiser, [illegible] by the Chief Appraiser or the Area Appraiser [illegible]. The Handler, in preparing the wool for appraisal, shall grade or group all wool received in lots or clips of less than 5,000 pounds into original bag lines of uniform grade, length, quality, color, and shrinkage. The Appraisal Committee shall not be required to make an appraisal of such wool until the Handler has accumulated an aggregate of at least 20,000 pounds. Appraisals of smaller lots may, however, be made at the discretion of the Area Appraiser or Chief Appraiser. In showing bags of wool to the Appraisal Committee for appraisal, the

Handler shall show bags of wool which are representative of the lot. The Appraisal Committee, however, may require the Handler to show, at the expense of the Handler, and may examine any number of bags of wool in the lot.

The appraised value of the wool shall be based on:

(i) The Appraisal Committee's determination of grade, length, staple, type, and classification of the wool as shown in the Appraisal Committee's Certificate; and

(ii) The price thereof as shown in the Schedule of Values attached hereto, which shall be subject to amendment by Committee from time to time.

Any such determination of appraised value for original bag wool shall, except in the case of free wool, be subject to the right of the producer, pool, or secondary handler to request a reappraisal of such wool by an Appeal Committee upon application to the Handler not later than fifteen (15) days after the mailing by the Handler of a copy of the Appraisal Committee's Certificate, as provided in paragraph 13 hereof; Provided, That (i) such wool is available for reappraisal in original bags or bales at the time the application for reappraisal is received by the Handler, and (ii) the producer, pool, or secondary handler has not accepted payment from the Handler for such wool. Any such reappraisal shall be made under the direction and in the area of the Area Appraiser who made the original appraisal and shall be final. In the event such reappraisal confirms the original appraisal, the actual cost of such reappraisal (including the Handler's charges for taking down and storing appraised bags or bales at not to exceed seventy-five (75) cents each), but not to exceed $50.00, shall be charged to the producer, pool, or secondary handler. In the event such reappraisal differs from the original appraisal, the purchase price shall be adjusted accordingly.

Deductions

(a) **For Grading.** For any wool for which the Handler has provided grading, a grading charge of not to exceed three-fourths (¾) of a cent per pound of grease wool shall be deducted from the appraised value of the wool in computing the purchase price.

(b) **For Scouring and Carbonizing.** For any wool scoured or carbonized, the actual scouring or carbonizing costs paid or payable by the Handler, including the cost of sorting the wool and transporting it from the warehouse to the scouring mills, and if necessary, from the scouring mills to the place of storage, shall be deducted from the appraisal value of the wool in computing the purchase price.

(B) The minimum rail or trucking freight rate to Portland from the shipping point of the wool plus ten (10) cents per hundredweight, plus two (2) cents per pound for grease wool, or three and one-half (3½) cents per pound for scoured or carbonized wool; except that if transit privileges are not available, the actual freight from the shipping point to the place where the wool is appraised, plus the minimum rail or trucking freight rate from the place where the wool is appraised to Portland, plus ten (10) cents per hundredweight, plus two (2) cents per pound for grease wool or three and one-half

(8½) cents per pound for scoured or carbonized wool;

(d) For Handling. For any wool for which the Handler must render a single accounting sales, a handling charge, not to exceed the amount stated below, shall be deducted from the appraised value in computing the purchase price.

(i) One and three-fourth (1¾) cents per pound of grease wool, or four and one-fourth (4¼) cents per pound of scoured or carbonized wool purchased from a producer, pool, or secondary handler in lots of 5,000 pounds or more; or

(ii) Two and one-half (2½) cents per pound of grease wool, or five and one-half (5½) cents per pound of scoured or carbonized wool purchased from a producer, pool, or secondary handler in lots of less than 5,000 pounds.

(iii) Plus one-fourth (¼) of a cent per pound of grease wool on which an advance payment has been made in accordance with paragraph 5 hereof.

(e) For Wool Received on Consignment by Secondary Handler. In the case of wool which is consigned to a secondary handler by a producer, and is from is delivered to the Handler and with respect to which the Handler must render a direct accounting to the producer, the secondary handler's customary charges, but not to exceed one and one-half (1½) cents per grease pound, shall be deducted from the appraised value in computing the purchase price, and the amount of such deduction shall be remitted to such secondary handler.

(f) For Wool Received on Consignment by Handler with Respect to Which Handler, with Approval of Commodity, Has Performed Country Service. For wool received on consignment by the Handler with respect to which the Handler, with prior written approval of Commodity, has performed country service, a country service charge in the following amounts shall be deducted from the appraised value in computing the purchase price, provided no prior deduction or charge has been made or allowed hereunder for secondary handling charges:

(i) One and three-fourths (1¾) cents per grease pound for wool which the Handler has collected in bulk from farms, transported at his own expense from farms to country assembly points, rough-graded at his own expense, packed at his own expense in his own bags, stored at his own expense prior to shipment, and delivered to a local warehouse of the Handler or loaded on trucks or cars for shipment to warehouses of the Handler other than a local warehouse;

(ii) One and one-half (1½) cents per grease pound for wool which the Handler has received from producers at country assembly points, including his own warehouse, and with respect to which he has performed at his own expense all the other services specified in (i) above;

(iii) One (1) cent per grease pound for wool with respect to which the Handler has not performed all of the services specified in (i) or (ii) above.

8. Commodity's Purchase Price for Wool Purchased by Secondary Handler or Pool. Commodity's purchase price for wool, other than free wool, purchased from a secondary handler or a pool who purchased such wool from producers shall be an amount equal to the appraisal value less the deductions specified in paragraph 7 and less an additional two (2) cents per pound, except that, if the secondary handler or pool furnishes a certification, as hereinafter provided, as to the amount paid the producers for such wool, Commodity's purchase price shall be the amount paid the producers plus:

(i) In the case of wool which the secondary handler or pool has collected in bulk from farms and transported at his own expense, from farms to country assembly points, rough-graded at his own expense, packed at his own expense in his own bags, stored at his own expense prior to shipment to the Handler, and delivered to a local warehouse of the Handler or loaded on trucks or cars for shipment to warehouses of the Handler other than a local warehouse—two and one-half (2½) cents per pound, grease weight, for lots of 5,000 pounds or more, or one and three-fourths (1¾) cents per pound, grease weight, for lots of less than 5,000 pounds;

(ii) In the case of wool which the secondary handler or pool has received from producers at country assembly points, including his own warehouse, and with respect to which he has performed the other services specified in (i) above—two and one-fourth (2¼) cents per pound, grease weight, for lots of 5,000 pounds or more, or one and one-half (1½) cents per pound, grease weight, for lots of less than 5,000 pounds;

(iii) In the case of wool with respect to which the secondary handler or pool has not performed all of the services specified in (i) or (ii) above—one and one-half (1½) cents per pound, grease weight, for 5,000 pounds or more, or one (1) cent per pound, grease weight, for lots of less than 5,000 pounds.

Provided, however, That such purchase price shall in no event exceed the appraisal value less the deductions specified in paragraph 7.

The certification referred to above shall be a written certification to the Handler, as to the quantity of wool purchased from each producer and the amount paid or payable therefor. A copy of such certification, with the addresses of the producers included, must be filed by the secondary handler with the County Agricultural Conservation Committee for the county in which the secondary handler has his principal place of business. The certification which is furnished the Handler must contain a statement by such County Agricultural Conservation Committee that a copy of the certification has been filed with it.

9. Commodity's Purchase Price for Wool Purchased by Handler in His Own Name. Commodity's purchase price to be paid to the Handler for wool, other than free wool, purchased by the Handler from producers with the approval of Commodity, in his own name, for sale to Commodity, shall be the amount paid by the Handler to the producers for such wool plus a country service fee in an amount equal to the country service charge specified in paragraph 7 (f) hereof: Provided, however, That Commodity's purchase price shall in no event exceed the appraisal value less the deductions specified in subparagraphs (a), (b), (c), and (d), of paragraph 7 hereof.

Commodity shall, upon application by the Handler, make a provisional payment to the Handler for such wool in an amount equal to the appraisal value less the deductions specified in subparagraphs (a), (b), (c), and (d), of paragraph 7 and in paragraph 12 hereof: Provided, however, That the Handler shall at such times as Commodity may specify, certify in writing to Commodity the amount paid to the producers for such wool, and, if the amount of the provisional payment theretofore made exceeds the amount paid to the producers, plus the country service fee aforesaid, the Handler shall refund to Commodity an amount equal to such excess.

10. Wool Received on Consignment by Secondary Handler or Pool. Wool which is received by a secondary handler or a pool on consignment from producers, under consignment contracts authorizing the secondary handler or pool to receive payment for the wool on behalf of the producers, and for which an individual account sales must be rendered to the producer by the secondary handler or pool, may be purchased by the Handler for the account of Commodity only in the event that the handling charge made by the secondary handler or pool with respect to such wool does not exceed the customary charge of such secondary handler or pool or the following charge:

(i) In the case of wool which the secondary handler or pool has collected in bulk from farms and transported at his own expense from farms to country assembly points, rough-graded at his own expense, packed at his own expense in his own bags, stored at his own expense prior to shipment to the Handler, and delivered to a local warehouse of the Handler or loaded on trucks or cars for shipment to warehouses of the Handler other than a local warehouse—two and one-half (2½) cents per pound, grease weight, for wool received by the secondary handler in lots of less than 5,000 pounds and combined by him into lots of more than 5,000 pounds, or one and three-fourths (1¾) cents per pound, grease weight, for other lots;

(ii) In the case of wool which the secondary handler or pool has received from producers at country assembly points, including his own warehouse, and with respect to which he has performed the other services specified in (i) above—two and one-fourth (2¼) cents per pound, grease weight, for wool received by the secondary handler in lots of less than 5,000 pounds and combined by him into lots of more than 5,000 pounds, or one and one-half (1½) cents per pound, grease weight, for other lots;

(iii) In the case of wool with respect to which the secondary handler or pool has not performed all of the services specified in (i) or (ii) above—one and three-fourths (1¾) cents per pound, grease weight, for wool received by the secondary handler in lots of less than 5,000 pounds and combined by him into lots of more than 5,000 pounds, or one (1) cent per pound, grease weight, for other lots.

The Handler shall require, as a condition of the purchase, that the secondary handler or pool transmit to Commodity in Washington, D. C., copies of the account sales rendered to the producers.

11. Wool Received by Handler from Pools.

(a) Separate Accounts. If wool received by the Handler from a pool was delivered for the separate accounts of the individual producers making up such pool, the wool of each individual producer shall be deemed to have been received directly from such producer, or, if the pool performs the service of a secondary handler, from such secondary handler for the individual account of such producer.

(b) Joint Accounts. If wool received by the Handler from a pool was delivered for the joint account of all producers making up such pool, the wool shall be deemed to have been received from, and the pool shall be treated as a single producer, or, if the pool performs the services of a secondary handler, the wool shall be

deemed to have been received from such secondary handler for the account of the pool treated as a single producer. When the pool renders individual account sales to producers, one copy of each such account sales shall be forwarded to Commodity.

12. Payment of Purchase Price to Producer, Pool, or Secondary Handler. The Handler shall, within thirty (30) days after the appraisal of wool delivered to the Handler hereunder, or, in the case of a reappraisal, within (30) days after such reappraisal, pay to the producer, pool, or secondary handler the pur-
21 chase price of such wool less a service and appraising charge of one and one-eighth (1⅛) cents per pound in the case of grease wool, or two and eight-tenths (2.8) cents per pound in the case of scoured or carbonized wool and less the actual cost (but not to exceed $40.00) of any reappraisal made where the original appraisal was confirmed.

13. Account Sales. When the Handler makes payment for wool pursuant to paragraph 12 hereof, he shall transmit to the producer, pool, or secondary handler an account sales in form approved by Commodity. In the case of original bag wool, such account sales shall be accompanied by a copy of the Appraisal Committee's Certificate, or Appeal Committee's Certificate, if any. If the wool has been graded or grouped into lines, the account sales shall show the grade, shrink, weight, and appraisal value of each grade thereof as shown by the Appraisal or Appeal Committee's Certificates, and shall identify such certificates by serial numbers.

14. Transit Insurance. All wool received by the Handler shall be insured by him against loss or damage by fire, lightning, windstorm, flood, tornado, and rain, while it is in transit and prior to its receipt in the warehouse. Commodity shall not be responsible, nor shall the handler obligate Commodity to be responsible for loss or damage to the wool prior to its receipt in the warehouse. The Handler shall indemnify and save Commodity harmless from any loss of or damage to the wool prior to its receipt in the warehouse or from any claim made against Commodity on account of such loss or damage.

STORAGE OF WOOL

15. General. The Handler shall, subject to the right of Commodity to direct where the wool shall be stored, provide proper storage, upon the terms and conditions hereinafter specified,
22 for the wool received by the Handler for purchase hereunder and shall take such action as may be necessary to keep such wool in good condition. The Handler shall notify Commodity immediately of any damage to, or loss or destruction of, such wool. The Handler shall stencil or mark all bags and bales containing such wool with the letters "C. C. C." Notwithstand-

ing any other provision hereof, Commodity shall have the right at any time it determines the wool is improperly stored hereunder to require any such wool to be rewarehoused at the Handler's expense in such facilities as Commodity may specify.

(a) Warehouse Receipts. The Handler shall, upon receipt of wool for storage hereunder, unless Commodity approves otherwise, issue negotiable or nonnegotiable warehouse receipts therefor, which shall comply in form with the Uniform Warehouse Receipts Act.

(b) Warehouse Insurance. The Handler shall not, unless otherwise indicated in the space below, be obligated to insure the wool received hereunder after it is placed in the warehouse, and, unless the Handler is obligated to insure the wool, Commodity shall indemnify and save the Handler or producer, pool, or secondary handler from which such wool was received harmless from any loss of or damage to the wool after it is placed in the warehouse or from any claim made against the Handler on account of such loss or damage, provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool.

The Handler shall at any time Commodity notifies the Handler in writing insure the wool as provided herein.

Accepted HAROLD T. LINDSAY
By (s) HAROLD T. LINDSAY

If there has been inserted in the space above a requirement that the wool be insured while in storage, the Handler shall, at
23 his own expense, insure such wool against loss or damage by fire, including sprinkler damage, lightning, windstorm, tornado, flood, and rain, with such companies, under such policies and in such amounts as Commodity may approve or specify.

SALE OF WOOL

16. General. The Handler shall, as rapidly as possible, sell in the usual channels of trade and for the account of Commodity wool purchased hereunder.

(a) Sales Price. Unless otherwise specifically directed or authorized by Commodity in writing, all such sales shall be made for cash without discount:

(i) delivered at the warehouse in which such wool is stored at the time of sale and at the appraisal value, less, in the case of wool stored in warehouses located outside of Boston, Massachusetts, the minimum freight rate from such point of storage to the railroad destination of the purchaser thereof, but in no event shall such deduction exceed the

freight deduction made with respect to such wool under paragraph 7 (c) hereof; or

(ii) f. o. b. car at the railroad destination of the purchaser thereof and at the appraisal value, but sales shall not be made upon this basis if the minimum freight rate from the point of storage to such railroad destination exceeds the freight deduction made with respect to such wool under paragraph 7 (c) hereof;

Provided, That off wools as defined by Commodity or the Chief Wool Appraiser shall be sold at not less than prices determined by the Appraisal Committee.

(b) Basis of Sale. All such sales shall be made on the basis of the Appraisal Committee's Certificate, or the Appeal Committee's Certificate, if any, and the out-weights of the warehouse in which such wool is stored at the time of sale, or, in the case of wool for which no warehouse receipts have been issued, the in-weights of the purchaser accompanied by the invoice weights. The purchaser, within ten (10) days after receipt of such wool, shall have the right to require a reappraisal of such wool by an Appeal Committee upon application to Commodity or to the Handler provided such wool is available for reappraisal in the state in which it was received by the purchaser. Any such reappraisal shall be final and in the event such reappraisal confirms the appraisal shown on the Appraisal or Appeal Committee's Certificate, as the case may be, the cost of such reappraisal shall be paid by the purchaser to Commodity. In the event such reappraisal differs from that shown on the appraisal or Appeal Committee's Certificate, the sales price shall be adjusted accordingly.

24

(c) Remittance of Proceeds of Sale. The Handler shall immediately remit all sales proceeds, accompanied by such documents as Commodity may prescribe, directly to Commodity or to the Bank.

(d) Acceleration of Sales. If the rapidity with which the Handler sells wool purchased hereunder is at any time not satisfactory to Commodity, Commodity may, by written notice, request the Handler to accelerate sales, and if the Handler fails to do so within thirty (30) days from the receipt of such notice, Commodity may itself sell any part or all of any wool remaining unsold at such times and in such manner and upon such terms and conditions as Commodity may determine. Notwithstanding any other provision hereof, Commodity shall have the right upon notice to the Handler at any time immediately to take over any or all wool purchased hereunder, or the sale or disposition thereof, and to sell or otherwise dispose of such wool at such times, in such

manner and upon such terms and conditions as Commodity may determine: Provided, That if Commodity exercises such right without giving the Handler a minimum of thirty (30) days' prior notice, it shall pay the Handler an amount equal to the amount withheld pursuant to paragraph 20 (b) hereof, without requiring the wool to have been sold by the Handler, unless Commodity takes over such wool, or the sale or disposition thereof, because of a breach of this agreement. In the event Commodity takes over any wool purchased hereunder, or the sale or disposition thereof, Commodity shall not be obligated to pay the Handler for the bags in which the wool is contained.

PAYMENTS TO HANDLER

17. Reimbursement for Purchase Price. Within thirty (30) days after the Handler has settled in full with the producer, pool, or secondary handler for wool purchased hereunder, as provided in paragraph 12 hereof, the Handler shall make application, in form approved by Commodity, for the amount so paid and shall tender, either directly to Commodity or to the Bank the following documents applicable to the wool, and Commodity or the Bank shall promptly pay to the Handler such amount less any amount previously paid to the Handler as reimbursement for advance payments pursuant to paragraph 4 hereof, provided such documents are submitted in proper form and are properly executed by the Handler:

(i) Request for Payment in form approved by Commodity;
(ii) Copy of the account sales;
(iii) Warehouse receipts representing the wool; and
(iv) Appraisal Committee's Certificate or Appeal Committee's Certificate, if any.

In case the documents are submitted to the Bank, a copy of the Request for Payment, appraisal certificate, and account sales shall also be transmitted to Commodity at Washington, D. C. The Handler shall in all cases warrant that wool purchased hereunder is free and clear of any and all liens and encumbrances.

If wool purchased hereunder is sold prior to the time the Handler requests reimbursement, the Handler shall, in making application for such reimbursement, remit therewith the proceeds of such sale.

The Handler, upon execution of a trust receipt in form satisfactory to Commodity, may, in order to effectuate the purposes of this agreement, obtain possession of warehouse receipts delivered to the Bank pursuant to the provisions of this paragraph. De-

livery orders may also be obtained upon execution of a trust receipt in form approved by Commodity.

18. Reimbursement for Freight and Trucking. (a) Commodity shall reimburse the Handler for actual freight and trucking costs, and, if the wool was shipped by the producer, pool, or [illegible] Handler without prior notice, demurrage cost, if any, paid by the Handler for the shipment of wool purchased hereunder to warehouses in Boston, Massachusetts, or Portland, Oregon, but such reimbursement shall not without specific prior approval of Commodity exceed in the case of Boston-stored wool the amount deducted therefor under paragraph 7 (c) hereof or, in the case of Portland-stored wool, the amount deducted under paragraph 7 (c) hereof less two (2) cents for grease wool or three and one-half (3½) cents for scoured or carbonized wool. In the case of wool stored in Boston in warehouses having trackside unloading facilities, Commodity shall reimburse the Handler for actual unloading costs, not to exceed ten (10) cents per hundredweight, paid or payable by the Handler for unloading the wool from railroad cars. In the case of wool stored in transit under transit billing at a point outside of Boston, Commodity shall reim-
97 burse the Handler for the amount (not to exceed ten (10) cents per hundredweight) paid for such storage-in-transit privilege in accordance with applicable tariffs: Provided, That if such wool is subsequently shipped from such place of storage [illegible] for the account of Commodity, the amount of reimbursement to the Handler for the cost of the storage-in-transit privilege shall be deducted from the amount of reimbursement for [illegible].

(b) Commodity shall also reimburse the Handler for the actual [illegible]

(c) Commodity shall reimburse the Handler for the costs referred to in subparagraphs (a) and (b) of this paragraph 18 upon application [illegible] to Commodity or to the Bank, in form approved by Commodity, accompanied, in the case of wool stored in transit under transit billing, by certified copies of paid in-bound freight bills or transit tonnage slips evidencing storage-in-transit privileges.

19. Payment or Reimbursement for Storage. Commodity shall pay the Handler or reimburse him for the storage of the wool at not to exceed the following rates per month or fraction thereof:

(i) Rates on Bales of Wool:
Fifteen (15) cents per bale of wool weighing less than 350 pounds;
Twenty-five (25) cents per bale of wool weighing 350 to 500 pounds;
Thirty (30) cents per bale of wool weighing 500 pounds or more.

(ii) Rates on Bags of Wool:
For wool grown in the Fine Staple area:
Fifteen (15) cents per bag of wool of six and one-half (6½) feet or less in length; twenty (20) cents per bag of wool of more than six and one-half (6½) feet in length.
For wool grown elsewhere:
Ten (10) cents per bag of wool of six and one-half (6½) feet or less in length; fifteen (15) cents per bag of wool of more than six and one-half (6½) feet in length.

(iii) Rates on Wool [illegible]

[illegible]

applicable to Commodity for a Wool Handler's Agreement, or amendment thereto, and shall not in any event exceed the charges specified above.

20. Payment for Grading, Scouring, Carbonizing, Handling, etc.

(a) In addition to the reimbursements or payments made pursuant to paragraphs 17, 18, and 19, Commodity shall pay to the Handler, subject to the provisions of subparagraph (b) of this paragraph 20, for grading, scouring, carbonizing, handling, and

all other services which he renders or provides with respect to the wool, an amount equal to the amount deducted from the appraised value of the wool under subparagraphs (a), (b), (d), (e), and (f) of paragraph 7 hereof, plus seventy-five (75) cents per bag for taking down and displaying bags for reappraisals.

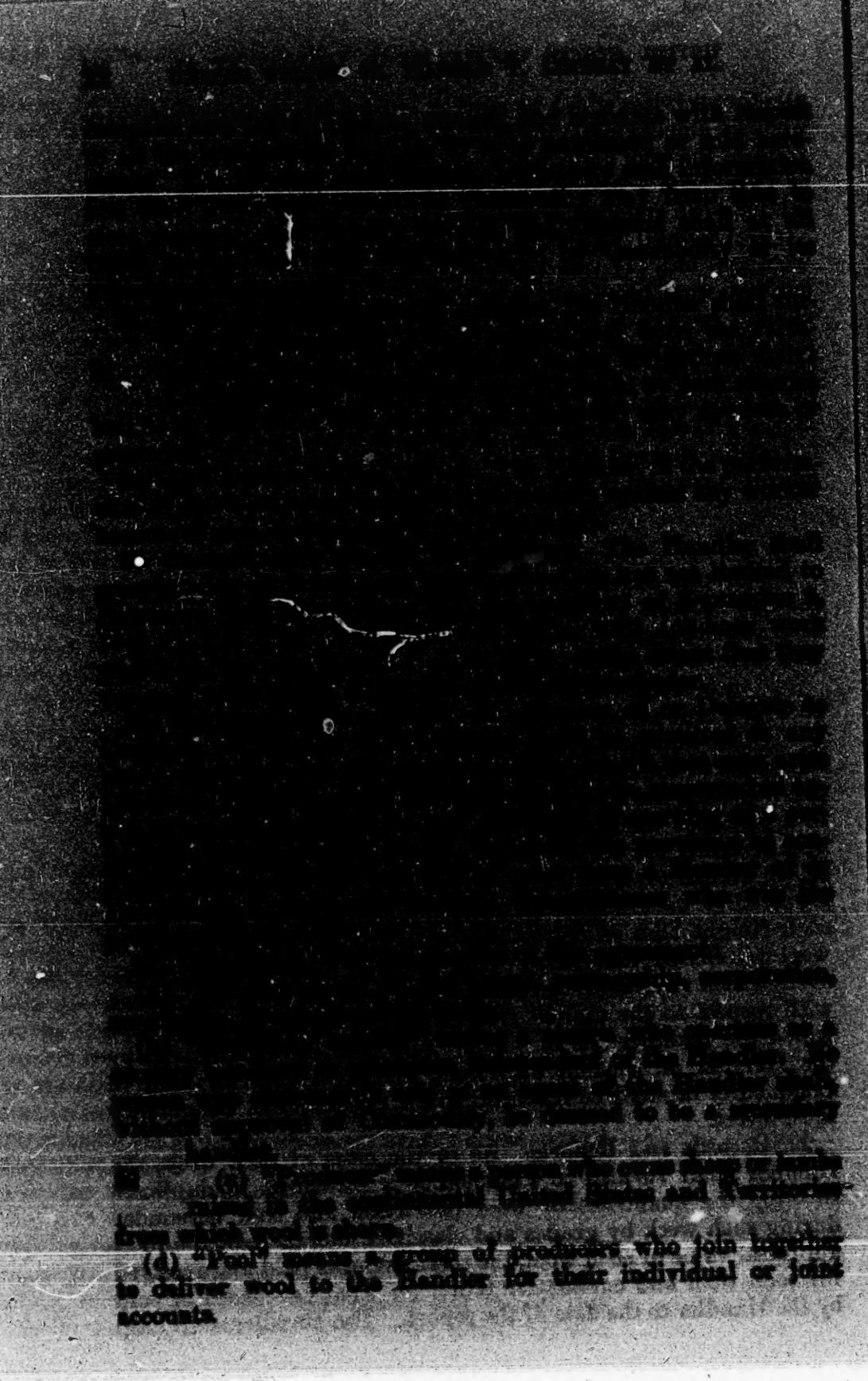
(b) One-half (½) of a cent per pound in the case of grease wool and one (1) cent per pound in the case of scoured or carbonized wool purchased hereunder shall be withheld from the amounts payable under subparagraph (a) of this paragraph 20, until the wool is sold by the Handler and the proceeds are remitted to Commodity. In case wool purchased hereunder is not sold by the Handler, such amount withheld shall not be paid by the Handler except as provided in paragraph 18 (d) hereof.

(c) No charges other than those for which payment is specifically provided in this agreement shall be made by the Handler.

Miscellaneous

21. Transit Privileges. The Handler shall hold and shall use for the account of Commodity all paid in-bound freight bills or transit tonnage slips evidencing transit privileges in connection with wool purchased hereunder. In connection with each such freight bill or transit slip, the Handler shall keep a current record showing the original shipping point, date and number of waybill, date and number of the freight bill, name of the carrier, the transit weight, the use of the transit privilege, and the amount of transit privilege, and the Handler shall, in accordance with the carrier's tariff and rules of the carrier's agent, record for the account of Commodity, each such freight bill or transit tonnage slip and take all steps necessary to secure Commodity such transit privilege. The Handler shall affix such freight bills or transit tonnage slips to the reshipment of wool purchased hereunder. The Handler shall furnish Commodity such reports as Commodity may from time to time request with respect to the unused freight bills or transit tonnage slips which the Handler has on hand. Any cash refund received by the Handler on account of transit privileges shall be paid to Commodity or shall be refunded to the producers as Commodity shall direct.

22. Records and Reports. As of the close of each week, the Handler shall furnish to Commodity a statement in duplicate showing the quantities of wool purchased and sold hereunder during such week by grades and classifications thereof, the total appraisal value of such wool, the total amounts paid and received for such wool and cumulative totals for wool purchased or sold by the Handler to the date of the report. The Handler shall keep



(d) "Pool" means a group of producers who join together to deliver wool to the Handler for their individual or joint accounts.

[illegible]

Conformed Copy

THE PEERLESS CASUALTY COMPANY
Keene, New Hampshire

War Food Administration
Commodity Credit Corporation
Wool Form M - 1946) Wool Handler's Bond

Know all men by these presents, that the undersigned Harold T. Lindsay, 49 Melcher Street, Boston, Massachusetts, as Principal (hereinafter called "Principal"), and the Peerless Casualty Company, a corporation organized and existing under the laws of the State of New Hampshire, and United Pacific Insurance Company, a corporation organized and existing under the laws of the State of Washington, and General Casualty Company of America, a corporation organized and existing under the laws of the State of Washington, as Surety, (hereinafter called "Surety"), are held and firmly bound unto the Commodity Credit
24 Corporation, a corporate agency of the United States of America, in the sum of Two Hundred Thousand and 00/100 Dollars ($200,000.00), as follows: The Principal and the Peerless Casualty Company as Surety, jointly and severally in the sum of One Hundred Thousand and 00/100 Dollars ($100,000.00) and no more; the Principal and the United Pacific Insurance Company as Surety, jointly and severally in the sum of Fifty Thousand and 00/100 Dollars ($50,000.00) and no more; the Principal and the General Casualty Company of America as Surety, jointly and severally in the sum of Fifty Thousand and 00/100 Dollars ($50,000.00) and no more, for the payment of which sum, well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents as hereinabove provided.

The Obligors herein expressly agree that, for the purpose of allowing a joint action against any or all of them, and for that purpose only, this bond shall be treated as the "joint and several" as well as the "several" obligation of each of the Obligors.

Whereas, the Principal has heretofore entered into or may hereafter from time to time enter into one or more agreements with the Commodity Credit Corporation under which the Principal will receive and purchase wool for the account of Commodity Credit Corporation, and will store, handle, sell, and perform other services with respect to such wool (such agreements are hereinafter referred to as "Agreements"); and

Whereas, the Commodity Credit Corporation desires to be secured against the Principal's failure to perform fully the Principal's obligations and undertakings under or in connection with such Agreements and any amendments or supplements thereto, and under or in connection with any invoices, trust receipts, or other documents executed in connection therewith.

Now, therefore, the condition of the foregoing obligation is such, That if the Principal shall well and truly perform and discharge all the Principal's obligations and undertakings under or in connection with such Agreements or any amendments or supplements thereto (the Surety hereby waives notices of the execution and contents of such agreements and amendments or supplements thereto); and under or in connection with any invoices, trust receipts, or other documents of any kind executed in connection therewith (the Surety also hereby waives notice of the execution and contents of such documents); shall indemnify the Commodity Credit Corporation for the amount of any improper or incorrect payment received by the Principal as a result of any false, inaccurate, or misleading invoice, trust receipt, or other document of any kind executed in connection with such Agreements and any amendments or supplements thereto; and shall indemnify the Commodity Credit Corporation for any amount paid to the Principal by or on behalf of the Commodity Credit Corporation which did not represent an obligation of the Commodity Credit Corporation under or in connection with such Agreements and any amendments or supplements thereto, then this obligation shall be void and of no effect; otherwise it shall remain in full force and effect.

This bond shall be effective from May 1, 1944, and shall continue to be effective so long as such Agreements and any amendments or supplements thereto or any obligation or undertaking of the Principal under or in connection therewith remains in effect; Provided, however, That this bond may be cancelled at any time by the Surety by giving written notice to the Commodity Credit Corporation, Washington, D. C., of its intention to cancel this bond and all liability hereunder shall terminate ninety (90) days after the date of the receipt of such notice, except that the rights of the Commodity Credit Corporation shall not be affected by such notice as to any claims arising hereunder, whether presented or not, before the effective date of such cancellation notice.

Sealed with our seals, signed and dated this 14th day of July, 1944.

By (s) HAROLD T. LINDSAY, *Principal.*
PEERLESS CASUALTY COMPANY,
By (s) BELLA WIESLOW, *Attorney-in-Fact.*
UNITED PACIFIC INSURANCE COMPANY,
By (s) D. MORTON GRAY, *Attorney-in-Fact.*
GENERAL CASUALTY COMPANY OF AMERICA,
By (s) D. MORTON GRAY, *Attorney-in-Fact.*

Obligee's Consent to Cancellation of Prior Bonds

The Commodity Credit Corporation hereby consents, provided this bond is duly executed by the Principal and Surety, to the cancellation by the Principal and the Surety involved, of any prior Wool Handler's Bond executed by the Principal, such cancellation to be effective as of the effective date of this bond, except that the rights of the Commodity Credit Corporation shall not be affected by such cancellation as to any claims arising under such prior bond or bonds, whether presented or not, before the effective date of such cancellation.

COMMODITY CREDIT CORPORATION,
By (s) C. C. FARRINGTON, *Vice President.*

Attest:
(s) NORRIS J. FAUBLE,
Assistant Secretary.

37 In United States District Court

Motion to Dismiss by Defendant Harold T. Lindsay—Filed March 5, 1952

The defendant Harold T. Lindsay moves the Court to dismiss the action for the following reasons:

1. Because the complaint fails to state a claim against defendant upon which relief can be granted;

2. Because the complaint discloses that the wool was stored under a written agreement between Commodity and this defendant that Commodity would indemnify and save this defendant harmless from any loss or damage to the wool or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of this defendant or his agents to use due care in regard to the wool.

3. Because the complain discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

By his attorneys,

WITHINGTON, CROSS, PARK & MCCANN,
(s) EDWARD C. PARK,
73 Tremont Street,
Boston, Massachusetts.

In United States District Court

Motion To Dismiss by Defendant Draper & Company, Inc.—Filed March 13, 1952

The defendant Draper & Company, Inc. moves the Court to dismiss the action for the following reasons:

1. Because the complaint fails to state a claim against the defendant upon which relief can be granted;

2. Because the complain does not allege that any loss or
38 injury to the wool was caused by this defendant's failure to exercise such care in regard to the wool as a reasonably careful owner of similar goods would exercise.

3. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

By his attorneys,

WITHINGTON, CROSS, PARK & MCCANN,
(s) EDWARD C. PARK,
73 Tremont Street
Boston, Massachusetts.

In United States District Court

Motion by Defendants Peerless Casualty Company, United Pacific Insurance Company, General Casualty Company of America to extend the time of pleading—Filed March 20, 1952

Now come the defendants Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, and move to extend the time for filing their answers and for making motions directed to the pleadings until April 21, 1952.

By their attorneys,

WITHINGTON, CROSS, PARK & MCCANN,
(s) EDWARD C. PARK,
73 Tremont Street
Boston, Massachusetts.

Assented to
(s) STANLEY W. WISNIOSKI,
Asst. U. S. Attorney.

3/20/52

39 In United States District Court

Motion to dismiss by defendants Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America—Filed April 18, 1952

The defendants Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America move the Court to dismiss the action for the following reasons:

1. Because the complaint fails to state a claim against defendants upon which relief can be granted;

2. Because the complaint discloses that the wool was stored under a written agreement between Commodity and defendant Lindsay that Commodity would indemnify and save defendant Lindsay harmless from any loss or damage to the wool or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of defendant Lindsay or his agents to use due care in regard to the wool.

3. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

By their attorneys,

WITHINGTON, CROSS, PARK & MCCANN,

(s) EDWARD C. PARK,

73 Tremont Street
Boston, Massachusetts.

On April 21, 1952, the foregoing motions to dismiss came before the court (Sweeney, Ch. J.) and after hearing, were taken under advisement. The motions were allowed on April 28, 1952 and the following judgment entered thereafter:

40 In United States District Court

Judgment of dismissal—Entered April 29, 1952

SWEENEY, Ch. J. In accordance with the Memorandum of the Court handed down on April 28, 1952, after hearing on defendants' motions to dismiss and the allowance thereof, it is hereby

ORDER.

Action dismissed with costs taxed at $
By the Court,

(s) HELEN I. TWEEDY,
Deputy Clerk.

April 29, 1952.
GEO. C. SWEENEY,
U. S. District Judge.
Entered April 29, 1952.

JOHN A. CANAVAN,
Clerk.

By (s) HELEN I. TWEEDY,
Deputy Clerk.

In United States District Court

Memorandum opinion—April 28, 1952

SWEENEY, Ch. J. In this action the plaintiff seeks to recover damages under a wool storage contract between Commodity Credit Corporation (hereinafter referred to as Commodity), a federally chartered corporation, and the defendant Lindsay. It alleges that a corporate predecessor to Commodity entered into a wool storage contract with Lindsay under which he agreed to and did store wool which he acquired in first class condition, but that when the wool was returned to Commodity on February 20, 1945 it was in a wet and damaged condition. It is asserted that this damage was caused by the failure of the defendant Lindsay to perform his obligation under the contract for proper storage and for
41 such care as the wool needed to be kept in a good condition.

The other defendants are the warehouseman who stored the wool and various surety companies.

The defendants have filed a Motion to Dismiss, claiming among other things that the cause of action is barred by the Statute of Limitations. This Court is of the opinion that the motion should be allowed. Title 15 U. S. C. A. § 714b(c) provides in part that:

> "No suit by or against the corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, * * *.
>
> * * * * * *
>
> "Any suit by or against the United States as the real party in interest based upon any claim by or against the corporation shall be subject to the provisions of this subsection (c) of this section to the same extent as though such suit were by or against the corporation."

The right of action in this case accrued to Commodity's corporate predecessor on February 26, 1945 when the wool was returned in damaged condition. This suit was not brought until February 29, 1952. Consequently it is barred.

The original Commodity, a Delaware Corporation, was created as an agency of the United States in October, 1933, pursuant to Executive Order No. 6340. On June 29, 1948 the Commodity Credit Charter Act transformed Commodity into a federal corporation and provided among other things that:

> "The assets, funds, property, and records of * * *(the) Delaware corporation, are transferred to the Corporation."

and that

> "The enforceable claims of or against Commodity Credit Corporation * * * shall become the claims of or against, and may be enforced by or against the Corporation."

42

See 15 U. S. C. A. §714n. This act also provided for a four-year period of limitations, which was extended to six years by amendment in June, 1949 (63 Stat. 154, 156). Prior to the year 1948 there was no federally enacted provision containing a period of limitations applicable to suits by or against Commodity.

The Government contends that the statutory period of limitations enacted in 1948 operates prospectively and not retrospectively, and that as a result the present action is not barred. In support of this contention the Government cites three unreported decisions: United States v. Bowden, Civil No. 196, United States District Court for the Northern District of Georgia; United States v. Rabinoff, Civil No. 12200-Y, United States District Court for the Southern District of California; United States v. Hain, Civil No. 703-N, United States District Court for the Northern Division of the Middle District of Alabama.

This Court agrees that these cases stand for the proposition attributed to them by the Government, but regrets that it cannot agree with the distinguished jurists who rendered these decisions. It is my opinion that the limitation provision under consideration was intended to operate both prospectively and retrospectively. I base my conclusion on the plain and unequivocal language of § 714b (c) of title 15 U. S. C. A. That section requires that the action be brought "within six years after the right accrued on which suit is brought". To translate "accrued" as the equivalent of "acquired" by the Government or to read into the statute a provision to the effect that the period of limitation "accrues" only from the date of enactment of the statute seems to fly in the face of the express language of § 714b (c).

The Motions to Dismiss are allowed.

43 In United States District Court

Notice of appeal—Filed June 23, 1952.

Notice is hereby given this 23rd day of June 1952, that the United States of America, plaintiff in the above-entitled case appeals to the United States Court of Appeals for the First Circuit from the judgment of dismissal entered on the 29th day of April 1952 in favor of the defendants and against said plaintiff.

GEORGE F. GARRITY,
United States Attorney,
By: (s) STANLEY W. WISNIOSKI,
Assistant U. S. Attorney.

In United States District Court

Statement of points on which appellant intends to rely—Filed September 10, 1952

The United States of America, appellant, states that the points on which it intends to rely are as follows:

1. The District Court erred:

a. In holding that this action brought by the United States was barred by the Act of Congress of June 29, 1948. 15 U. S. C. 714.

b. In granting the defendant's motion to dismiss.

GEORGE F. GARRITY,
United States Attorney,
By: (s) STANLEY W. WISNIOSKI,
Assistant U. S. Attorney.

44 [Designation of contents of record on appeal omitted in printing.]

[Memorandum: Order of enlargement of time in the District Court for docketing case to and including September 21, 1952, is here omitted. John A. Canavan, Clerk.]

45 [Clerk's certificate to foregoing transcript omitted in printing.]

PROCEEDINGS IN COURT OF APPEALS

On December 2, 1952, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, Chief Judge, and Honorable Peter Woodbury and Honorable John P. Hartigan, Circuit Judges, sitting.

Thereafter, to wit, on February 26, 1953, the following opinion of the Court was filed:

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT—OCTOBER TERM, 1952

No. 4686

UNITED STATES OF AMERICA, PLAINTIFF, APPELLANT,

v.

HAROLD T. LINDSAY ET AL., DEFENDANTS, APPELLEES

Appeal from the United States District Court for the District of Massachusetts

[105 F. Supp. 467]

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*

Melvin Richter, Attorney, Department of Justice, with whom *Holmes Baldridge*, Assistant Attorney General, *George F. Garrity*, United States Attorney, *Stanley Wisniewski*, Assistant U. S. Attorney, and *Paul A. Sweeney*, *George F. Foley* and *John G. Laughlin*, Attorneys, Department of Justice, were on brief, for appellant.

Edward C. Park, with whom Withington, Cross, Park & McGann was on brief, for appellees.

OPINION OF THE COURT—February 26, 1953

WOODBURY, *Circuit Judge*:

This is an appeal from a judgment entered on motion dismissing an action brought by the United States on a claim of its wholly-owned agency, Commodity Credit Corporation (chartered by Congress June 29, 1948, 62 Stat. 1070), to recover from a wool handler named Lindsay, his sureties, and Draper and Company, Inc., a warehouseman, for damage to wool owned by Commodity and stored while under Lindsay's control in Draper's warehouse.

It is alleged in the complaint that the agency named above is the "successor in interest" of another wholly government owned agency of the same name previously chartered by the United States under the laws of Delaware; that the latter corporation entered into a so-called "wool handler's agreement" with Lindsay in 1944; that pursuant to that agreement Lindsay had in his possession wool belonging to Commodity which he stored with Draper; and that on or about February 26, 1945, the wool was "returned to Commodity in a wet and damaged condition" caused by failure "to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition." This action was filed on February 29, 1952, and the several defendants each seasonably moved for its dismissal on the ground, among others, that it appeared on the face of the complaint that the right of action set forth therein had not accrued within six years next preceding the bringing of the action. The court below granted the motions on the ground stated above and in consequence entered the judgment of dismissal from which this appeal is taken.

There was no federal statute putting a period of limitation upon suits by or against the original Commodity Credit Corporation—the one organized under the laws of Delaware. But in the Commodity Credit Corporation Charter Act of June 29, 1948, (62 Stat. 1070) creating the new federally chartered corporation of the same name, it was specifically provided in § 4(c) that "No suit by or against the Corporation shall be allowed unless it shall have been brought within four years after the right accrued on which suit is brought." In June 1949 the four-year time limitation for bringing suits was extended by amendment to six years (63 Stat. 154, 156), and the time limitation was specifically made applicable to suits such as this by the last sentence of § 4(c) of the 1948 Act wherein it is provided: "Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of this subsection (c) to the same extent as though such suit were by or against the Corporation." The question for decision, therefore, is whether the six year period of limitation began to run on February 26, 1945, when the wool was returned to original Commodity in damaged condition, or whether it did not begin to run until midnight June 30, 1948, when new Commodity came into being and the statute of limitations included in its Charter Act went into effect.

Giving the statutory language its literal meaning, there can be no doubt that the action brought by the United States is barred, for the cause of action sued upon came into existence, that is to say "accrued," as that word is ordinarily used, when the wool was returned in damaged condition on February 26, 1945, almost exactly seven years before this suit was brought. But counsel for the United

States say that to apply the statute to bar the present action is necessarily to give the statute retroactive effect, which on firmly established principles we are not to assume that Congress intended. Thus we are urged to construe the word "accrued" as having reference to June 30, 1948, the effective date of the statute which created present Commodity and provided a period of limitation upon suits by or against it or the United States as the real party in interest.

It is true that in the leading case of *Sohn* v. *Waterson*, 17 Wall. 596 (U.S. 1873), and in several cases both before and since, statutes putting a limitation on the time for bringing suit worded in much the same way as the statute under consideration were held on the general principle relied upon by the Government to have prospective effect only, that is, to affect existing causes of action only from the time of the passage of the statute limiting time for suit. But the cases in which this construction was adopted were cases between private parties, and the strained construction was openly resorted to only for the purpose of preventing the statutes from summarily cutting off existing rights, and for this reason being unconstitutional. In this case, however, we are not confronted with any constitutional problem.

Certainly Congress could put any period of limitation it thought expedient upon suits brought by an agency of its own creation, such as the one before us, without running any risk of constitutional invalidity. *United States* v. *Union Planters Nat. Bank & Trust Co.*, 175 F. 2d 684 (C.A. 5, 1949). Indeed counsel for the United States concede as much. But they say that a retroactive construction of the statute under consideration would create grave constitutional problems with respect to suits against Commodity, and, because the limitation is equally applicable to suits both "by or against the Corporation," no room is left for treating the two kinds of suits differently. We do not find the argument persuasive.

Since consent to sue the United States is a privilege which is revocable at any time (*Lynch* v. *United States*, 292 U.S. 571, 581 (1934); *Cummings* v. *Deutsche Bank*, 300 U.S. 115, 119 (1937)), it is by no means clear that Congress could not constitutionally cut off existing causes of action against Commodity by the expedient of enacting a limitation on the time for bringing suit against it. At any rate, there will be enough time to consider whether problems of constitutionality require an interpretation of the statutory provision as applied to suits against Commodity in accordance with the reasoning of *Sohn* v. *Waterson*, *supra*, and like cases, when a suit against Commodity on a stale claim such as the one sued upon here is before us for consideration. Then, presumably, we will be more fully advised as to the constitutional power of Congress to clothe Commodity with the sovereign immunity of the United States from suit, for it would seem from the language used that Congress in-

tended to give the wholly government owned corporate agency it created immunity as of the date of the agency's creation from suit on stale claims, but not immunity from suit on fresh ones. In the meantime speculation is idle. It will suffice to say that we see no reason to give the statutory language a strained construction in the situation before us merely because on the authorities perhaps we might have to give it a strained construction to save its constitutionality in a situation the converse of the one under consideration. In short, we do not think it would be too embarrassing to give the statutory language one meaning in the situation before us, and another in the converse situation of a suit against Commodity, if on full presentation we should feel that such a course was necessary to save the statute from successful attack on constitutional grounds. It follows from the foregoing discussion that we do not find the opinion of the Court of Appeals for the Sixth Circuit in *Field Packing Co. v. United States*, 197 F. 2d 220 (1952) persuasive.

Other arguments of counsel for the United States resting on other provisions of the Commodity Credit Corporation Charter Act and its legislative history have been considered and rejected as not persuasive in view of the clear language of the section under consideration.

The judgment of the District Court is affirmed.

PROCEEDINGS IN COURT OF APPEALS

On the same day, February 26, 1953, the following judgment was entered:

Judgment—February 26, 1953

This cause came on to be heard on the record on appeal from the United States District Court for the District of M[illegible]setts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

(S.) Roger A. Stinchfield,
Clerk.

Thereafter, on March 14, 1953, mandate issued.

CLERK'S CERTIFICATE

I, Roger A. Stinchfield, Clerk of the United States Court of Appeals for the First Circuit, certify that the foregoing pages numbered 1 to 52 inclusive, contain and are a true copy of the record and all proceedings to and including April 27, 1953, in the cause in said

Court numbered and entitled, No. 4886, United States of America, plaintiff, appellant, versus Harold T. Lindsay et al., defendants, appellees.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Court of Appeals for the First Circuit, at Boston, Massachusetts, in said First Circuit, this twenty-seventh day of April, A. D. 1953.

(S.) Roger A. Stinchfield,
Clerk.

[SEAL]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1953 252770 1953

58 SUPREME COURT OF THE UNITED STATES

No. 24, October Term, 1963

UNITED STATES OF AMERICA, PETITIONER
vs.
HAROLD T. LINDSAY ET AL.

Order allowing certiorari. Filed October 18, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1963

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	6
Conclusion	16

CITATIONS

Cases:

Addison v. *Holly Hill Fruit Products*, 322 U. S. 607	10
Brewster v. *Gage*, 280 U. S. 327	10
Bruner v. *United States*, 343 U. S. 112	11, 12
Carscadden v. *Territory of Alaska*, 105 F. 2d 377	8, 9
Chicago, Milwaukee, St. Paul & Pacific R. R. Co. v. *Acme Fast Freight, Inc.*, 336 U. S. 465	14
Claridge Apartments Co. v. *Commissioner*, 323 U. S. 141	10
Du Pont de Nemours & Co. v. *Davis*, 264 U. S. 456	10
Edwards v. *Kearzey*, 96 U. S. 595	9
Federal Trade Commission v. *Raladam Co.*, 283 U. S. 643	14
Field Packing Co. v. *United States*, 197 F. 2d 329	6, 7, 8
Fred Smartley, Jr., The, 108 F. 2d 603, certiorari denied *sub nom.* S. C. *Loveland Inc.* v. *Pennsylvania Sugar Co.*, 309 U. S. 683	8
Fullerton Company v. *Northern Pacific*, 266 U. S. 435	8
Harp v. *United States*, 173 F. 2d 761, certiorari denied, 338 U. S. 816	10
Harrison v. *Northern Trust Co.*, 317 U. S. 476	14
Hassett v. *Welch*, 303 U. S. 303	10
Herrick v. *Boquillas Cattle Co.*, 200 U. S. 96	8
Humphreys Executor v. *United States*, 295 U. S. 602	14
Independent Coal & Coke Co. v. *United States*, 274 U. S. 640	10
Keahbone ng v. *Burton*, 104 U. S. 668	9
Lewis v. *Lewis*, 7 How. 776	8
McLean v. *United States*, 226 U. S. 374	14
Morissette v. *United States*, 342 U. S. 246	12
Ochoa v. *Hernandez*, 230 U. S. 139	9
Shapiro v. *United States*, 335 U. S. 1	12
Shwab v. *Doyle*, 258 U. S. 529	11
Sohn v. *Waterson*, 17 Wall. 596	8
Sturges v. *Crowninshield*, 4 Wheat. 122	9

Cases—Continued Page

Terry v. *Anderson*, 95 U. S. 628 9
Un. Pac. R. R. v. *Laramie Stock Yards*, 231 U. S. 190 ..... 8, 11
United States v. *American Trucking Assns.*, 310 U. S. 534 14
United States v. *Anderson*, No. 1343 (W. D. Wash.), appeal pending (C. A. 9), *sub nom. Anderson* v. *United States* 6, 15
United States v. *H. Bowden*, No. 196 (N. D. Ga.) 6
United States v. *City & County of San Francisco*, 310 U. S. 16 14
United States v. *Dickerson*, 310 U. S. 554 14
United States v. *R. S. Hain*, No. 708–N (N. D. Ala.) 6
United States v. *Magnolia Co.*, 276 U. S. 160 10
United States v. *Marine Junk Co.*, No. 1155 (S. D. Ala.), appeal pending 6, 15
United States v. *Morena*, 245 U. S. 392 8
United States v. *Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120 10
United States v. *Public Utilities Comm. of California*, 345 U. S. 295 14
United States v. *Rabinoff*, No. 12290–Y (S. D. Calif.) 6
United States v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1 ..... 8, 11
United States v. *St. Paul M. & M. Ry. Co.*, 247 U. S. 310 14
United States v. *Whited & Wheless*, 246 U. S. 552 10
United States Fidelity Co. v. *Struthers Wells Co.*, 209 U. S. 306 ..... 11, 12
Vance v. *Vance*, 108 U. S. 514 9
Wilson v. *Iseminger*, 185 U. S. 55 9

Statute:

Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070–1071, 15 U. S. C. (Supp. II, 714 *et seq.*) 3
Section 4 (c) 2, 6
Section 4 (e) as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156, 15 U. S. C. (Supp. V) 714b (e) 2, 5, 6, 10
Section 16, 15 U. S. C. (Supp. V) 714n 3
Section 17, 15 U. S. C. (Supp. V) 714o 3

Miscellaneous:

94 Cong. Rec. A–4408 13
94 Cong. Rec. A–4409 13
94 Cong. Rec. 9132 13
94 Cong. Rec. 9311 13
H. R. 6263, 80th Cong., 2d Sess. 12
S. 1322, 80th Cong., 2d Sess. 12

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 832

UNITED STATES OF AMERICA, PETITIONER

v.

HAROLD T. LINDSAY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled cause on February 26, 1953.

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 40–42) is reported at 105 F. Supp. 467. The opinion of the Court of Appeals (R. 47–50) is reported at 202 F. 2d 239.

JURISDICTION

The judgment of the Court of Appeals was entered on February 26, 1953 (R. 50). The

jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the six-year limitation period contained in Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948, as amended, for the bringing of suits "by or against the Corporation," is computed, for claims of the Corporation against private individuals which accrued prior to the enactment of Section 4 (c), from the arising of the cause of action or from the statute's effective date.

STATUTE INVOLVED

Section 4 (c) of the Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070–1071, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156 (15 U. S. C. (Supp. V) 714b (c)), provides in pertinent part:

> * * * No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought. * * *[1]

STATEMENT

This action was instituted by the United States on February 29, 1952, on the basis of a

[1] Section 4 (c), as originally enacted, provided a four-year period of limitations. Section 5 of the 1949 Act, which amended the original 1948 Charter Act, modified Section 4 (c) to enlarge the period of limitations from four to six years.

claim of the Commodity Credit Corporation, a wholly owned corporation of the United States chartered by Congress in the Commodity Credit Corporation Charter Act of June 29, 1948 (62 Stat. 1070, 15 U. S. C. (Supp. II) 714 *et seq.* (the 1948 Charter Act)), and the successor in interest to the corporation of the same name previously chartered under Delaware law.* The purpose of the suit was to recover from Harold T. Lindsay, a wool handler, his sureties, and Draper and Company, Inc., a warehouseman, for damage to wool owned by the Corporation and stored by Lindsay while in his possession in the warehouse of Draper and Company (R. 3). This damage occurred not later than February 26, 1945.

According to the allegations of the complaint, Lindsay entered into a Wool Handler's Agreement with the Corporation to purchase, handle, store and sell domestic wool for the account of the Corporation under the 1944 Wool Purchase Program "to assist in supporting the market for domestic wool, and in assuring the immediate availability of wool for wartime requirements." (R. 8). Under the Agreement, Lindsay agreed to act as agent to pur-

*Section 16 of the Charter Act (15 U. S. C. (Supp. V) 714n) had transferred to the federally incorporated Commodity Credit Corporation the "rights, privileges, and powers, and the duties and liabilities of the Commodity Credit Corporation, a Delaware corporation" and further provided that enforceable claims of or against the Delaware Corporation (which was to be dissolved (Section 17)) "shall become the claims of or against, and may be enforced by or against," its federally incorporated successor.

chase, handle, store, and sell domestic shorn wool for and on behalf of Commodity Credit Corporation. The Corporation agreed to reimburse Lindsay the amounts paid for the wool and expenses authorized under the Agreement in handling and storing the wool, and to pay a fee for his services as handler. To secure the proper performance of this Agreement, Lindsay furnished to the Corporation a performance bond in the amount of $200,000, on which Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America were sureties (R. 33–36). The terms of the Agreement required Lindsay "to provide proper storage" for the wool and to "take such action as may be necessary to keep such wool in good condition" (R. 21–22). On February 26, 1945, Lindsay returned to the Corporation a quantity of wool which he had acquired and stored with Draper and Company (R. 5). The wool when so acquired and stored had been in good and undamaged condition but when it was returned to the Corporation it was wet and damaged due to the failure of Lindsay to perform his obligations under the Agreement to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition (R. 4, 5). By this suit, the United States sought to recover from the respondents damages in the amount of $1,127.03, with interest and costs (R. 4, 5).

The respondents moved to dismiss the complaint on the ground, among others, that the action was barred by the six-year statute of limitations imposed by Section 4 (c) of the 1948 Charter Act, as amended, *supra*, p. 2 (R. 37–39). The district court dismissed the complaint, rejecting the Government's contention that the time for bringing suit on claims which had accrued prior to the enactment of the limitation provision began to run from the date of that enactment (June 29, 1948) (R. 42).

The Court of Appeals for the First Circuit affirmed. It held that the "literal meaning" of Section 4 (c), *i. e.*, "'accrued' as that word is ordinarily used," clearly was retroactive to the date when the cause of action came into existence (R. 48). While the court went on to recognize that this Court had in several cases construed similarly worded statutes of limitations "to have prospective effect only, that is, to affect existing causes of action only from the time of the passage of the statute limiting time for suit" (R. 49), the court regarded these cases as inapplicable. The statutes in those cases were construed as prospective, according to the court, "only for the purpose of preventing the statutes from summarily cutting off existing rights, and for this reason being unconstitutional" (R. 49), but curtailing the Government's right to sue by a retroactive construction in the instant case would not raise any constitutional problems (R. 49).

REASONS FOR GRANTING THE WRIT

1. The cause of action on which the Government's complaint was based in the present case came into existence on or about February 26, 1945. At that time, there was no federal limitation provisions on the Government's instituting suit on such claims. Section 4 (c) of the Charter Act, enacted June 29, 1948, imposed the first statute of limitation on filing suit on claims "by or against the Corporation" and, as amended, authorized such a suit "within six years after the right accrued on which suit is brought * * *." The instant complaint was filed in February 1952, about 3½ years thereafter.

The holding of the court below that the six years allowed by Section 4 (c) runs from the date when the Government's cause of action came into existence, despite the fact that the claim arose prior to the enactment of Section 4 (c), is in square conflict with *Field Packing Co.* v. *United States*, 197 F. 2d 329 (C. A. 6).[1] In the *Field Packing* case, which, like the instant case, involved the application of Section 4 (c) to a claim of the Government arising prior to the enactment

[1] Several district courts have also held that the limitations provision of Section 4 (c) is computed from the effective date of the Act. *United States* v. *H. Bowden*, No. 195 (N. D. Ga.); *United States* v. *R. S. Hain*, No. 706-N (N. D. Ala.); *United States* v. *Rabinoff*, No. 12290-Y (S. D. Calif.); *United States* v. *Anderson*, No. 1343 (W. D. Wash.), appeal pending (C. A. 9); *contra: United States* v. *Marine Junk Co.*, No. 1155 (S. D. Ala.), appeal pending (C. A. 5).

of the statute, the Sixth Circuit, in a *per curiam* opinion, expressly rejected as "not well grounded" the contention of the appellant there—identical with the ruling of the court below here—that, even as to Government claims predating Section 4 (c), the time for bringing suit ran from the date when the claim came into existence, although at that time there was no limitation provision applicable to the Government. Instead, the Sixth Circuit held that Section 4 (c)

> * * * was intended to operate prospectively and not retroactively, it being established that no statute of limitation shall be given retroactive effect unless such construction is required by explicit language or by necessary implication, see Fullerton Krueger Lumber Co. v. Northern Pacific Ry. Co., 266 U. S. 435, 437, 45 S. Ct. 143, 69 L. Ed. 367; Sohn v. Waterson, 17 Wall. 596, 84 U. S. 596, 21 L. Ed. 737; Cf. Shwab v. Doyle, 258 U. S. 529, 534, 42 S. Ct. 391, 66 L. Ed. 747; United States Fidelity & Guaranty Co. v. Struthers Wells Co., 209 U. S. 306, 314, 28 S. Ct. 537, 52 L. Ed. 804; Claridge Apartments Co. v. Commissioner of Internal Revenue, 323 U. S. 141, 164, 65 S. Ct. 172, 89 L. Ed. 139; United States v. St. Louis, S. F. & T. R. Co., 270 U. S. 1, 3-4, 46 S. Ct. 182, 70 L. Ed. 435.

The court below recognized the conflict between its ruling and that of the Sixth Circuit, but since it did "not find the opinion of the Court of Ap-

peals for the Sixth Circuit in *Field Packing Co. v. United States*, 197 F. 2d 329 (1952) persuasive" (R. 50), refused to accept the Sixth Circuit's holding.

2. (a). We believe that the holding of the First Circuit that Section 4 (c) applies retroactively to claims of the Commodity Credit Corporation is erroneous. This decision is based on "giving the statutory language its literal meaning" (R. 48). But the statutory language relied on consists solely of the word "accrued." While "accrued," as applied to after-arising claims, undoubtedly is equated with the cause's coming into existence, several decisions of this Court have established that "accrued" is not to be given that meaning when applied to claims pre-dating the statute's enactment. *Sohn* v. *Waterson*, 17 Wall. 596; *Herrick* v. *Boquillas Cattle Co.*, 200 U. S. 96, and *United States* v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1; *Lewis* v. *Lewis*, 7 How. 776, 778; *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190, 199, 200–202; *United States v. Morena*, 245 U. S. 392, 395; *Fullerton Company* v. *Northern Pacific*, 266 U. S. 435; see also *The Fred Smartley, Jr.*, 108 F. 2d 603 (C. A. 4), certiorari denied *sub nom. S. C. Loveland Inc.* v. *Pennsylvania Sugar Co.*, 309 U. S. 683; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9). In each of these cases, the limitation provision was formulated in terms of when the claim "accrued," yet the courts have uniformly held that, as to claims arising before the statute's

enactment, the time for instituting suit was not to be computed from the claim's coming into existence but rather, at the earliest, from the statute's effective date.

The court below recognized that newly imposed statutes of limitations are normally read as prospective only. However, it ruled that only where rights of private individuals *inter se se* are involved is such a construction appropriate because of constitutional problems which would be raised by a retroactive construction.[4] Since no problems of constitutionality would be presented by a retroactive application of Section 4 (c) here, where it is the Government which is asserting a claim against a private individual, the court concluded that there was no occasion for according the Government the benefits of the presumption against retroactivity.

But although there is no constitutional obstacle to Congress' cutting off at any time the Government's right to sue, this Court has consistently ruled that "[s]tatutes of limitations against the United States are to be narrowly construed" so as to

[4] As between private litigants it is clear that a newly enacted statutory provision which has the effect of barring (or not allowing a reasonable time in which to assert) a claim would be unconstitutional. *Sturges* v. *Crowninshield*, 4 Wheat. 122, 207; *Edwards* v. *Kearzey*, 96 U. S. 595, 603; *Terry* v. *Anderson*, 95 U. S. 628; *Koshkonong* v. *Burton*, 104 U. S. 668; *Vance* v. *Vance*, 108 U. S. 514; *Wilson* v. *Iseminger*, 185 U. S. 55, 62; *Ochoa* v. *Hernandez*, 230 U. S. 139; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9).

favor the Government. *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, 650. See also, *Du Pont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 462; *United States* v. *Whited & Wheless*, 246 U. S. 552, 561; *Harp* v. *United States*, 173 F. 2d 761, 763–764 (C. A. 10), certiorari denied, 338 U. S. 816; cf. *United States* v. *Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120, 125. Moreover, Section 4 (c) applies equally to suits "by or against the Corporation"; there is nothing in the Act which would justify treating suits *by* the Corporation differently from those *against* the Corporation and as to the latter the retroactive construction adopted below might raise the very constitutional problems feared by the court.[5]

In any case, the premise that limitations statutes of this type are construed prospectively solely to avoid constitutional doubts is erroneous. Wholly apart from constitutional restrictions, which are quite narrow, the courts have consistently been cautious in reading non-jurisdictional legislation retroactively[6]—a reluctance stemming from the desire to avoid the often inequitable results of legislation which interferes with antece-

[5] The court below recognized that in a suit by a private individual against the Corporation constitutional questions might proscribe a retroactive construction (R. 49–50).

[6] *Brewster* v. *Gage*, 280 U. S. 327; *United States* v. *Magnolia Co.*, 276 U. S. 160, 162–163; *Hassett* v. *Welch*, 303 U. S. 303; *Claridge Apartments Co.* v. *Commissioner*, 323 U. S. 141, 164; *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607; and cases cited *supra*.

dent rights or which ascribes "a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed." *Un. Pac. R. R.* v. *Laramie Stock Yards*, 321 U. S. 190, 199. The principle has accordingly become well established that a statute (not involving the jurisdiction of courts) "is not to be given retroactive effect unless such construction is required by explicit language or by necessary implication." *Bruner* v. *United States*, 343 U. S. 112, 117, fn. 8. See also *United States Fidelity Co.* v. *Struthers Wells Co.*, 209 U. S. 306, 314; *Shwab* v. *Doyle*, 258 U. S. 529, 534; and cases cited in fn. 6, *supra*, p. 10. The presumption against retroactivity of newly imposed statutes of limitations is, we submit, merely one aspect of this principle applicable to construction of legislation generally, and as such is plainly not based solely on constitutional grounds. *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190, 199; *United States* v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1.[1] In these circumstances,

[1] *United States* v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1, involved Section 16 of the Transportation Act of 1920, 41 Stat. 456, which provided: "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after." In that case, suit was brought by the railroad against the United States to recover for transportation services rendered to the War Department. The United States defended on the ground, *inter alia*, that the limitation provision applied to claims which arose prior to the passage of the 1920 Act. It was held that the 1920 Act had no application to causes of action

whatever the literal meaning of "accrued" as used in Section 4 (c) may be, it falls short of the "clear, strong and imperative" language (*United States Fidelity Co.* v. *Struthers Wells Co.*, 209 U. S. at 314) required to overcome the presumption against retroactivity.

(b). Apart from the probability that Congress was aware of the settled judicial construction of newly imposed statutes of limitations and acted in light thereof (*Shapiro* v. *United States*, 335 U. S. 1, 16; *Morissette* v. *United States*, 342 U. S. 246, 261–263), the legislative history of Section 4 (c) demonstrates that Congress expected it to operate prospectively in accordance with the usual rules. The time limitation was made applicable to claims *by* the Corporation by a Conference Committee compromise,* effected and accepted by both the Senate and the House on

existing at the date of the passage of the Act. "That a statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication is a rule of general application. * * * There is nothing in the language of paragraph 3 of § 16, or in any other provision of the Act, or in its history, which requires us to hold that the three-year limitation applies, under any circumstances, to causes of action existing at the date of the Act." *Id.*, p. 3. See *Bruner* v. *United States*, 343 U. S. 112, 117, fn. 8.

*The original Senate Bill (S. 1322), as reported by the Senate Committee and as passed by the Senate, provided a two-year limitation on claims *against* the Corporation. The House substitute bill (H. R. 6263) provided for a four-year period of limitations on claims *against* the Corporation. Neither version provided for a time limitation on claims *by* the Corporation.

June 19, 1948 (94 Cong. Rec. 9132, 9311), in the closing rush of Congressional business preparatory to adjournment on June 20. There was no discussion of the limitation provision during the debate on the floor of either the House or Senate. However, Senator Aiken, who was a member of the responsible Senate Committee, the manager of the bill on the Senate floor and the senior Senate conferee, submitted an analysis of the bill, as reported by the Conference Committee, in which he stated (94 Cong. Rec. A-4408, A-4409):

> Another change made by the conference committee was to make the proposed 4-year statute of limitations applicable not only to claims against the Corporation but also to claims by the Corporation. The committee felt that the statute of limitations should be applicable to claims by the Corporation as well as to claims against the Corporation. As provided by section 16, the proposed 4-year statute of limitations will not limit or extend any period of limitation otherwise applicable to claims against the Delaware Corporation. *With respect to claims by the Corporation, the 4-year period of limitations will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the new charter.* [Emphasis supplied.]

This statement by Senator Aiken, who had a leading role in connection with the 1948 Act, is entitled to great, if not conclusive, weight.*

The court below rejected this legislative history as not persuasive because of what it considered the clear language of Section 4 (c) (R. 50). However, as we show *supra*, pp. 8–12, the language of Section 4 (c) does not clearly require the reading given it by the court below, particularly in view of the consistent construction to the contrary accorded to similar statutes. And even if Section 4 (c) were unambiguous on its face, resort can properly be had to the explicit views of the chief Senatorial sponsor of the measure. *United States* v. *American Trucking Assns.*, 310 U. S. 534, 543–544; *United States* v. *Dickerson*, 310 U. S. 554, 561–562; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *United States* v. *Public Utilities Commn. of California*, 345 U. S. 295, 315–316.

3. The issue involved is important and the conflict between the court below and the Sixth Circuit should be resolved by this Court. The Department of Agriculture advises that, at the present

* *United States* v. *City and County of San Francisco*, 310 U. S. 16, 30–26; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 625; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 650; *McLean* v. *United States*, 226 U. S. 374, 380; *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.* v. *Acme Fast Freight, Inc.*, 336 U. S. 465, 471–476; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479–480.

time, the Commodity Credit Corporation has about 141 claims, totalling approximately $1,250,000, which would be barred under the decision of the court below. Venue with respect to these claims, on some of which suits have already been instituted, lies in 31 different district courts located in every judicial circuit, except the District of Columbia. It is therefore probable, should certiorari be denied, that many, if not all, of the other courts of appeals will be called upon to construe Section 4 (c). The issue is now pending on appeal in the Court of Appeals for the Ninth Circuit in *Anderson* v. *United States* (see fn. 3, *supra*, p. 6), and notice of appeal to the Court of Appeals for the Fifth Circuit has been filed from the ruling of the District Court for the Southern District of Alabama in *United States* v. *Marine Junk Co.* (see fn. 3, *supra*, 6).

We are also informed that the General Accounting Office is now engaged in reauditing the transportation charges paid by Commodity Credit Corporation during the war years 1943 through 1946, and collections have already been made by that office and deposited to the capital funds of the Corporation in the amount of approximately $1,500,000, representing overpayments by the Delaware Corporation in 1943 and 1944. It is estimated that the reaudit, when complete, will disclose overpayments aggregating between $7,000,000 and $8,000,000, which the Corporation will

seek to collect either through suit or by offset. Collections have already been made, in many instances, by means of deductions from bills presented by carriers for transportation charges on shipments recently made by other governmental agencies. If any of these offsets are disputed, the carrier may file suit in a district court or, if the claim exceeds $10,000, in the Court of Claims. Since the defense to such actions would generally be a counterclaim for these overpayments made during 1943 to 1946, this defense would be barred if Section 4 (c) were held to be retroactive. The question presented by this petition has, therefore, a large and continuing importance.

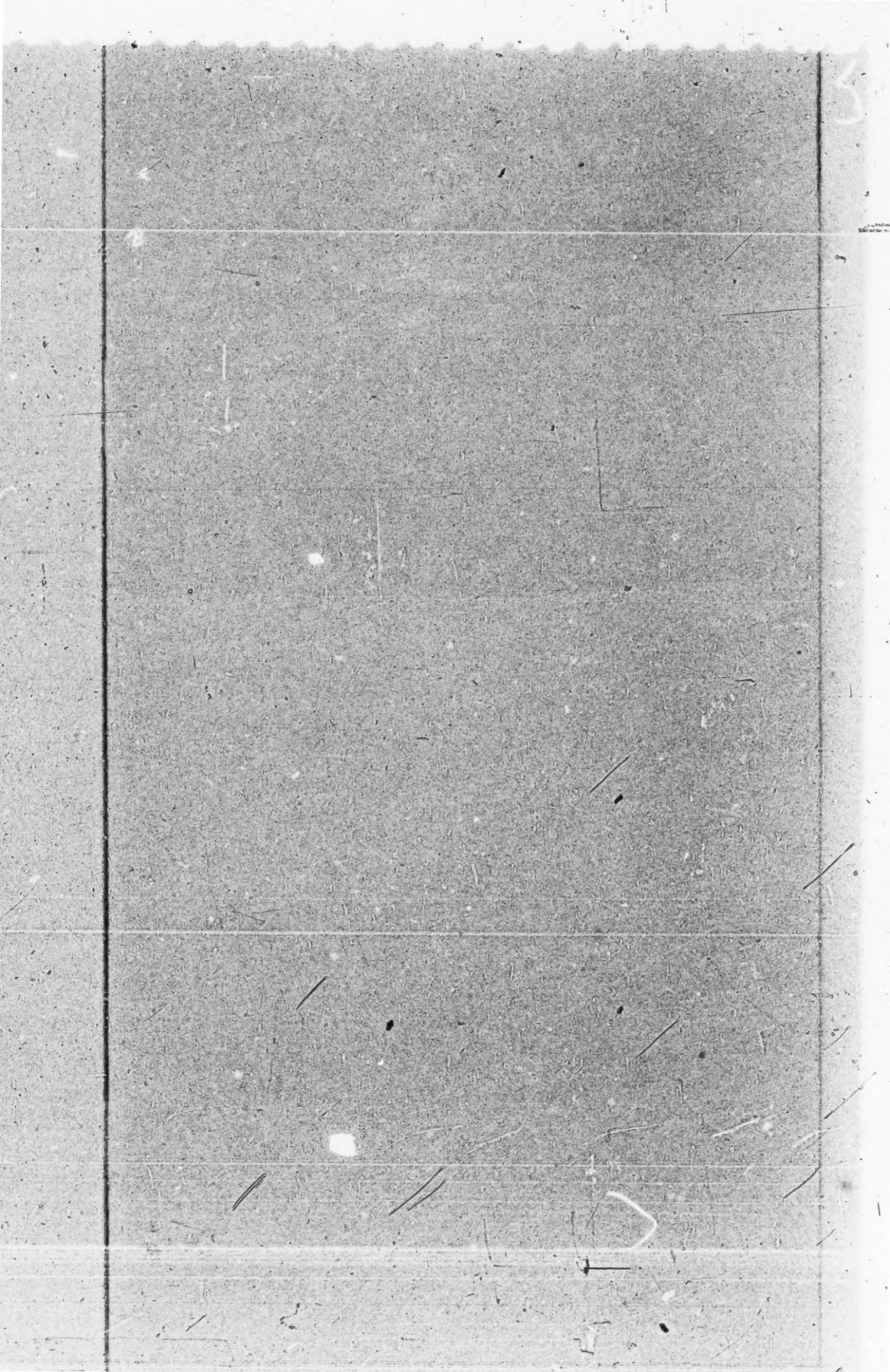
CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

MAY 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953



INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	6
Summary of argument	6
Argument:	
The cause of action of the Commodity Credit Corporation against respondents, which arose prior to the enactment of the six-year limitations provision in Section 4 (a) of the Charter Act of 1948, is not time barred since brought within six years of the Act's effective date—Introductory	9
A. Properly construed, Section 4 (a) on its face is prospective only	13
B. The legislative history reveals a Congressional intent that Section 4 (a) should be prospective only	26
Conclusion	36
Appendix	37

CITATIONS

Cases:	
Addison v. Holly Hill Fruit Products, 322 U. S. 607	24
American Communications Assn. v. Douds, 339 U. S. 382	22
American Mutual Liability Ins. Co. of Boston v. Lowe, 38 F. 2d 636	14
Armstrong Co. v. Nu-Enamel Corp., 305 U. S. 315	33
Brewster v. Gage, 280 U. S. 327	24
Bruner v. United States, 343 U. S. 112	24
Cahill v. Markham, 148 F. 2d 737, affirmed, 326 U. S. 404	23
Carmichael v. Territory of Alaska, 105 F. 2d 377	14, 21
Cherry Cotton Mills v. United States, 327 U. S. 536	11
Chicago, Milwaukee, St. Paul & Pacific R. R. Co. v. Acme Fast Freight, Inc., 336 U. S. 465	29
Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp., 333 U. S. 103	33
Church of the Holy Trinity v. United States, 143 U. S. 457	33
Clallam County v. United States, 263 U. S. 341	11
Claridge Apartments Co. v. Commissioner, 323 U. S. 141	24

Cases—Continued

	Page
Commissioner v. Estate of Church, 335 U. S. 632	33
Cummings v. Deutsche Bank, 300 U. S. 115	29
DuPont de Nemours & Co. v. Davis, 264 U. S. 456	21
Edwards v. Keasey, 96 U. S. 595	21
Emergency Fleet Corporation v. Western Union Telegraph Co., 275 U. S. 415	11
Erickson v. United States, 264 U. S. 246	11
Federal Trade Commission v. Raladam Co., 283 U. S. 643	20
Field Packing Co. v. United States, 107 F. 2d 329	7, 13, 35
Fred Smarling, Jr., The, 168 F. 2d 605, certiorari denied sub nom. *S. C. Loveland, Inc. v. Pennsylvania Sugar Co.*, 309 U. S. 663	14
Fullerton Company v. Northern Pacific, 266 U. S. 435	14
Guaranty Trust Co. v. United States, 304 U. S. 126	11
Harp v. United States, 173 F. 2d 751, certiorari denied, 338 U. S. 816	22
Harrison v. Northern Trust Co., 317 U. S. 476	29, 33, 34
Hazard v. Welch, 203 U. S. 209	24
Humphrey's Executor v. United States, 295 U. S. 602	20
Independent Coal & Coke Co. v. United States, 274 U. S. 640	21
Inland Waterways Corp. v. Young, 309 U. S. 517	11
Insurance Co. of North America v. United States, 150 F. 2d 998	11
Jeanette Cotton Mills Co. v. National Labor Relations Board, 174 F. 2d 749	14
Johnson v. United States, 342 U. S. 427	33
Kohlsaat v. Burton, 104 U. S. 665	21
Lawton v. Steinmetz Ry. Co., 326 U. S. 126	34
Lewis v. Lewis, 7 Howard 776	7, 14, 15, 16
Lynch v. United States, 292 U. S. 571	22
McLean v. United States, 226 U. S. 374	20
McMahon v. United States, 342 U. S. 25	22
Morissette v. United States, 342 U. S. 246	27
National Labor Relations Board v. Itasca Cotton Mfg Co., 179 F. 2d 504	14
New Brunswick v. United States, 276 U. S. 547	11
Ozawa v. United States, 260 U. S. 178	33, 34
Reading Co. v. Koons, 271 U. S. 58	19
Rees v. Durel, 13 Peters 44	14
Russell Wheel & Foundry Co. v. United States, 81 F. 2d 826	11
Schaub v. Daple, 252 U. S. 329	24
Schwegmann Bros. v. Calvert Distilling Corp., 341 U. S. 384	33
Shapiro v. United States, 335 U. S. 1	27
Sohn v. Waterson, 17 Wall. 596	7, 14, 15, 16
Southern Pacific Co. v. Reconstruction Finance Corp., 161 F. 2d 56	11
Sturges v. Crowinshield, 4 Wheat. 122	21

Cases—Continued Page
Terry v. *Anderson*, 95 U. S. 628 21
Union Pac. R. R. v. *Laramie Stock Yards*, 231 U. S. 190. 14, 24, 26
United States v. *Allied Oil Corp.*, 341 U. S. 1 11
United States v. *American Trucking Assns.*, 310 U. S. 534. 23, 24
United States v. *H. Bendon*, N. D. Ga., No. 195, April 21, 1950 ..... 30, 37
United States v. *City and County of San Francisco*, 310 U. S. 16 20
United States v. *Congress of Industrial Organizations*, 335 U. S. 106 23
United States v. *Delaware & Hudson Co.*, 213 U. S. 366 23
United States v. *Dickerson*, 310 U. S. 554 ..... 33, 34
United States v. *Hall*, 3 Cranch 309 24
United States v. *Magnolia Co.*, 276 U. S. 160 24
United States v. *Morgan*, 245 U. S. 302 14
United States v. *Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120. 22
United States v. *Public Utilities Commission*, 345 U. S. 295. 33, 34
United States v. *Rabinoff*, S. D. Calif., No. 12200—y, January 4, 1951 ..... 30, 38
United States v. *Rosenblum Truck Lines*, 315 U. S. 50 34
United States v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1 .. 8, 14, 17, 18, 26
United States v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310. 22, 29
United States v. *Summerlin*, 310 U. S. 414 ..... 11, 36
United States v. *Whited & Wheless*, 246 U. S. 552 22
United States Fidelity Co. v. *Struthers Wells Co.*, 209 U. S. 306 ..... 24, 25, 26
Vance v. *Vance*, 108 U. S. 514 21
Walling v. *Portland Terminal Co.*, 330 U. S. 148 33
Wilson v. *Isenmeyer*, 185 U. S. 55 21

Statutes:
Act of January 31, 1935, 49 Stat. 4, Sec. 7 9
Act of March 8, 1938, 52 Stat. 107 (15 U. S. C. 713a-1, 713a-2) 9
Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070 3
Section 4 (c), 15 U. S. C. (Supp. II) 714 b (c) 2, 10, 18
Section 4 (c) as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156, 15 U. S. C. (Supp. III) 714 b (c) 2, 7, 10, 18, 22, 36
Section 16, 15 U. S. C. (Supp. V) 714n 7, 23, 35
Section 17, 15 U. S. C. (Supp. V) 714o 10
Federal Employers' Liability Act (35 U. S. C. 66, as amended, 45 U. S. C. 56), Sec. 6 19
Government Corporation Control Act, 59 Stat. 597 9–10
Section 304 (a) 10
Section 304 (b) 10
Transportation Act of 1920, 41 Stat. 456 17

Miscellaneous:	Page
94 Cong. Rec. A-4405	9, 28
94 Cong. Rec. A-4409	9, 28
94 Cong. Rec. 4755	30
94 Cong. Rec. 4761	30
94 Cong. Rec. 5006	31
94 Cong. Rec. 9572	27
94 Cong. Rec. 9301-9303	27
94 Cong. Rec. 9130-9132	27
94 Cong. Rec. 9272	27
94 Cong. Rec. 9309-9311	27
Executive Order No. 6340	9
Executive Order No. 9230, dated December 5, 1942 (7 Fed. Reg. 10179)	3
Executive Order 9328 (8 Fed. Reg. 4807)	3
Executive Order 9334 (8 Fed. Reg. 5423)	4
Food Distribution Order 50 (8 Fed. Reg. 5131)	4
H. R. 6203, 80th Cong.	30-31
H. Rep. No. 1790, 80th Cong., 2d Sess., p. 10	31
H. Rep. 2444, 80th Cong., 2d Sess., p. 8	28
H. Rep. 418, 81st Cong., 1st Sess., p. 9	10
S. 1522, 80th Cong.	30
S. Rep. 1022, 80th Cong., 2d Sess., p. 11	30

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA, PETITIONER

v.

HAROLD T. LINDSAY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The memorandum opinion of the United States District Court for the District of Massachusetts (R. 29–30) is reported at 105 F. Supp. 467. The opinion of the United States Court of Appeals for the First Circuit (R. 33–36) is reported at 202 F. 2d 239.

JURISDICTION

The judgment of the Court of Appeals was entered on February 26, 1953 (R. 36). The petition for a writ of certiorari was filed on May 26, 1953, and granted on October 12, 1953 (R. 39).

The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the six-year limitation period contained in Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948 (as amended), for the bringing of suits "by or against the Corporation," is computed, for claims of the Corporation against private individuals which arose prior to the enactment of Section 4 (c), from the arising of the cause of action or from the statute's effective date.

STATUTE INVOLVED

Section 4 (c) of the Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070–1071, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156 (15 U. S. C. (Supp. III) 714b (c)), provides in pertinent part:

> * * * No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought. * * *[1]

STATEMENT

This action was instituted by the United States on February 29, 1952, to enforce a claim of the

[1] As originally enacted, Section 4 (c) provided a four-year period of limitations. Section 5 of the 1949 Act amended the 1948 Charter Act by enlarging the period of limitations from four to six years.

Commodity Credit Corporation, a wholly owned corporation of the United States chartered by Congress in the Commodity Credit Corporation Charter Act of June 29, 1948 (62 Stat. 1070, 15 U. S. C. Supp. II, 714 *et seq.* (the 1948 Charter Act)) and the successor in interest to the Corporation of the same name previously chartered under Delaware law. The purpose of the suit was to recover from Harold T. Lindsay, a wool handler, his sureties, and Draper and Company, Inc., a warehouseman, for damage to wool owned by the Corporation and stored by Lindsay while in his possession in the warehouse of Draper and Company (R. 1–4). This damage occurred not later than February 26, 1945 (R. 4).

According to the allegations of the complaint, Lindsay entered into a Wool Handler's Agreement with the Corporation to purchase, handle, store, and sell domestic wool for the account of the Corporation under the 1944 Wool Purchase Program "to assist in supporting the market for domestic wool, and in assuring the immediate availability of wool for wartime requirements" (R. 2, 6).[2] Under the agreement, Lindsay agreed

[2] During World War II, the President by Executive Order No. 9280, dated December 5, 1942 (7 Fed. Reg. 10179), authorized and directed the Secretary of Agriculture to assume full responsibility for and control over the nation's food program. "Food" was defined to include wool. The powers thus delegated to the Secretary of Agriculture (subsequently redelegated to the War Food Administrator by Executive Order 9322 (8 Fed. Reg. 3807), as amended by Executive

to act as agent to purchase, handle, store, and sell domestic shorn wool for and on behalf of Commodity Credit Corporation. The Corporation agreed to reimburse Lindsay for the amounts paid for the wool and expenses authorized under the Agreement in handling and storing the wool, and to pay a fee for his services as handler. To secure the proper performance of this agreement, Lindsay furnished to the Corporation a performance bond in the amount of $200,000 on which Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America were sureties (R. 6-23, 24-26). The terms of the agreement required Lindsay "to provide proper storage" for the wool and to "take such action as may be necessary to keep such wool in good condition" (R. 15). On February 26, 1945, Lindsay returned to the Corporation a quan-

---

Order 9334 (8 Fed. Reg. 5423)) included the assignment of priorities and the allocation of food, its efficient and proper distribution, and the purchase and distribution for other Federal agencies.

Pursuant to the powers vested in it by Executive Order No. 9280, the Department of Agriculture issued Food Distribution Order 50 (8 Fed. Reg. 5131), whereby all sales and deliveries of domestic wool were restricted to Commodity Credit Corporation or to those entering into Wool Handler's Agreements with the Corporation. The purpose of F. D. O. 50 was "to assure an adequate supply and efficient distribution of wool to meet war and essential civilian needs" (8 Fed. Reg. 5131).

The Wool Handler's Agreement, here alleged to have been breached, was entered pursuant to this Order.

tity of wool which he had acquired and stored with Draper and Company (R. 4). The wool when so acquired and stored had been in good and undamaged condition, but when it was returned to the Corporation it was wet and damaged due to the failure of Lindsay to perform his obligations under the agreement to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition (R. 4). By this suit, the United States sought to recover from the respondents damages in the amount of $1,127.03 with interest and costs (R. 3, 4).

The respondents moved to dismiss the complaint on the ground, among others, that the action was barred by the six-year statute of limitations imposed by Section 4 (c) of the 1948 Charter Act, as amended, *supra*, p. 2 (R. 26–28). The district court dismissed the complaint, rejecting the Government's contention that the time for bringing suit on claims which had accrued prior to the enactment of the limitation provision began to run from the date of that enactment (June 29, 1948) (R. 28–29).

The Court of Appeals for the First Circuit affirmed (R. 33–36). It held that the "literal meaning" of Section 4 (c), *i. e.*, "'accrued' as that word is ordinarily used," clearly was retroactive to the date when the cause of action came into existence (R. 34). While the court went on to recognize that this Court had in several cases

construed similarly worded statutes of limitations "to have prospective effect only, that is, to affect existing causes of action only from time of the passage of the statute limiting time for suit", the court regarded these cases as inapplicable (R. 35). The statutes in these cases were construed as prospective, according to the court, "only for the purpose of preventing the statutes from summarily cutting off existing rights, and for this reason being unconstitutional", but curtailing the Government's right to sue by a retroactive construction in the instant case would not raise any constitutional problems (R. 35–36).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the limitation period in Section 4 (c) of the Charter Act of 1948, as amended, is computed, for claims of the Commodity Credit Corporation against private individuals which arose prior to the enactment of Section 4 (c), from the date when the cause of action arose.

2. In failing to hold that the limitation period in Section 4 (c) is computed, for such claims by the Corporation, from the effective date of the Charter Act of 1948, *i. e.* June 29, 1948.

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

The cause of action underlying the Government's complaint in this case came into existence

on or about February 26, 1945, when the damaged wool was returned by respondent Lindsay to the Commodity Credit Corporation, then a Delaware corporation. At that time, there was no federal time limitation for instituting suit on the claim. By Section 16 of the 1946 Charter Act, this and other claims of the Delaware corporation were transferred to the newly chartered federal corporation of the same name and, by Section 4 (c) of the Charter Act, as amended, a six-year time limitation "after the right accrued" was imposed for the bringing of suits "by or against" the federal corporation.

The present complaint was filed on February 29, 1952, within six years of the effective date of the 1948 Act. The court below, however, relying upon what it regarded as the "literal meaning" of Section 4 (c), construed the statute retroactively and computed the six-year period from the date the cause of action first came into existence and thus held it to be time barred, in square conflict with the decision of the Sixth Circuit in *Field Packing Co.* v. *United States*, 197 F. 2d 329.

The language of Section 4 (c) is for all practical purposes the same as that in analogous limitation statutes which, as applied to causes of action existing prior to the enactment of the time limitation, have repeatedly been construed by this Court as prospective in operation. *Lewis* v. *Lewis*, 7 How. 776; *Sohn* v. *Waterson* 17 Wall.

596; *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1.

Contrary to the apparent understanding of the court below, the prospective effect accorded such statutes, and which must be given Section 4 (c), is not based solely upon the avoidance of constitutional questions; rather, it is but a particular application of the established rule, founded upon fairness and equity, that newly enacted statutes are to be read as prospective only, in the absence of clear language requiring retroactivity. In addition, there is nothing in the language of Section 4 (c) requiring that it operate retroactively and by so doing perhaps cut off summarily, or unreasonably curtail, the remedy of the federal corporation on claims transferred to it from the Delaware corporation.

The legislative history of the 1948 Act also reveals that Congress in enacting Section 4 (c) was at all times concerned with providing an acceptable time limitation which would be fair to both the Corporation and private claimants—a purpose which can be fulfilled only by giving Section 4 (c) a prospective interpretation. As to claims of the Federal Corporation, Senator Aiken, who had a leading role in the passage of the 1948 Act and who was the senior Senate member of the Conference Committee which for the first time made the proposed time limitation applicable to the Corporation, specifically stated, in his analysis of the 1948 Act, that time limitations

contained in Section 4 (c) "will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the new charter." 94 Cong. Rec. A-4408, 4409.

ARGUMENT

The cause of action of the Commodity Credit Corporation against respondents, which arose prior to the enactment of the six-year limitations provision in Section 4 (c) of the Charter Act of 1948, is not time barred since brought within six years of the Act's effective date

Introductory

The cause of action on which the Government's complaint was based in the present case came into existence on or about February 26, 1945, when Lindsay returned the wool in a damaged condition to Commodity Credit Corporation, then a Delaware corporation.[1] At that time, there was no federal statute prescribing a time within which the Government must bring suit on such a claim.

By the Commodity Credit Corporation Charter Act of June 29, 1948, Congress supplanted the Delaware corporation with a federally chartered corporation, as required by the Government Cor-

[1] The Delaware corporation had been created as an agency of the United States on October 16, 1933, pursuant to Executive Order No. 6340, and its charter had been obtained under the laws of the State of Delaware. By Section 7 of the Act of January 31, 1935 (49 Stat. 4), Congress continued the Corporation as an agency of the United States. The capital stock of the Corporation was eventually transferred to the United States (Act of March 8, 1938, 52 Stat. 107; 15 U. S. C. 713a-1 and 713a-2).

poration Control Act (59 Stat. 597).[4] Section 16 of the 1948 Charter Act transferred to the new federally chartered Commodity Credit Corporation the "rights, privileges, and powers, and the duties and liabilities of the Commodity Credit Corporation, a Delaware corporation", and also provided that enforceable claims of or against the Delaware Corporation, which under Section 17 (15 U. S. C. (Supp. V) 714o) was to be dissolved, "shall become the claims of or against, and may be enforced by or against" its federally incorporated successor. Section 4 (c) of the Charter Act imposed the first federal statute of limitation on filing suit on claims "by or against the Corporation" and, as amended,[5] authorized such a suit "within six years after the right accrued on which suit is brought. * * *." *Supra*, p. 2.

The court below has held that although the

---

[4] Section 304 (a) of the Control Act required that in the future Government corporations must be chartered directly by Congress or under specific congressional authorization and Section 304 (b) required that any existing corporation chartered under State law must be dissolved by June 30, 1948, but that it might be reincorporated by Act of Congress.

[5] As noted, *supra*, p. 2, fn. 1, the limitation provision in Section 4 (c), as enacted in 1948, allowed four years for the filing of actions. The period of limitations was extended to six years by the 1949 amendments to the Charter Act (63 Stat. 154, 159, c. 175, Sec. 5), upon the recommendation of the Chief Judge of the Court of Claims that the limitations provision be made uniform with that applicable to suits against the United States in the Court of Claims. H. Rep. No. 418, 81st Cong., 1st Sess., p. 9.

United States[6] filed the instant complaint in February, 1952, about 3½ years after the enactment of Section 4 (c), the suit was nevertheless barred since it was brought more than six years after the cause of action came into existence in 1945, even though at that time there was no federal limitation upon the Corporation's instituting suit on its claims.[7] The court based this ruling on the ground that the "literal meaning" of Section 4 (c), *i. e.*, "'accrued' as that word is ordinarily used"

[6] Although the claim here involved is that of the Commodity Credit Corporation, Section 4 (c) provided for the bringing of such suits in the name of the United States as the real party in interest. Moreover, even in the absence of such a provision, it would be proper to name the United States as plaintiff in such a suit since the United States has the right, apart from any statute, to sue in its own name for the protection of its interest on any claim of Commodity Credit Corporation. *United States* v. *Allied Oil Corp.*, 341 U. S. 1; *Cherry Cotton Mills* v. *United States*, 327 U. S. 536, 538–540; *New Brunswick* v. *United States*, 276 U. S. 547, 559–564; *Erickson* v. *United States*, 309 U. S. 246, 248; *Clallam County* v. *United States*, 263 U. S. 341, 344–345; *Insurance Co. of North America* v. *United States*, 189 F. 2d 699, 702 (C. A. 4); *Russell Wheel & Foundry Co.* v. *United States*, 81 F. 2d 526, 527 (C. A. 6). Even when a wholly-owned Government corporation is a party to a suit, the United States is recognized as the real party in interest when Government funds are involved. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524; *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, 424; *Southern Pacific Co.* v. *Reconstruction Finance Corp.*, 161 F. 2d 58, 59 (C. A. 9).

[7] It is well established that statutes of limitation do not run against the Government unless it is expressly included. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132–133; *United States* v. *Summerlin*, 310 U. S. 414, 416. See R. 30, 34.

(R. 34), clearly was retroactive to the date when the cause of action came into existence, notwithstanding the fact that this date was prior to the enactment of Section 4 (c).

This conclusion is inconsistent with the repeated holdings of this Court that, as applied to claims antedating the enactment of a newly imposed statute of limitations, the word "accrued" in such a limitations provision is to be read as prospective only, in accordance with the general principle that new statutes are not to be applied retroactively unless required by explicit language. *Infra*, pp. 12–26. In addition, the court's conclusion failed to give weight to the Act's legislative history which reveals a Congressional intent that Section 4 (c) should operate prospectively from the effective date of the Act, and, hence, not bar the instant suit. *Infra*, pp. 26–35.

A. Properly construed, Section 4 (c) on its face is prospective only

1. The court below purported to base its decision on "giving the statutory language its literal meaning" (R. 34). But the statutory language relied on consists solely of the word "accrued," a word which is found in most statutes of limitation and which is used, more frequently than not, without any connotation of retroactivity. And while "accrued," as applied to after-arising claims, undoubtedly is equated with the time the causes come into existence, it does not have the retroactive connotation attributed to it by the

court below as far as pre-existing causes are concerned, for, if it did, most statutes of limitations would have a retroactive effect.

In fact, the contrary is true. *Field Packing Co. v. United States*, 197 F. 2d 329 (C. A. 6), like the instant case, involved the application of Section 4 (c) of the 1948 Charter Act to a claim of the Government arising prior to the enactment of the statute. The appellants there urged, as the court below held, that as to such claims the time for bringing suit ran from the date when the claim came into existence, although at that time there was no federal limitation provision applicable to the Government. The Court of Appeals for the Sixth Circuit, in a *per curiam* opinion, expressly rejected this contention as "not well grounded" (197 F. 2d at 330), and ruled instead that Section 4 (c) "was intended to operate prospectively and not retroactively, it being established that no statute of limitation shall be given retroactive effect unless such construction is required by explicit language or by necessary implication."

The holding of the Sixth Circuit, rather than that of the court below, is correct. This Court has repeatedly held that the term "accrued", in newly imposed statutes of limitations is not to be read as synonymous with the coming into existence of the claims, in situations where the claim arose prior to the statute's enactment, and has further held that as to such claims the limitation

provision, if applicable at all, begins to run from the statute's effective date. *Lewis* v. *Lewis*, 7 How. 776, 778; *Ross* v. *Duval*, 13 Pet. 44, 62; *Sohn* v. *Waterson*, 17 Wall. 596; *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190; *United States* v. *Morgan*, 245 U. S. 392, 395; *Fullerton Company* v. *Northern Pacific*, 266 U. S. 435; *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1; see also *American Mutual Liability Ins. Co. of Boston* v. *Lowe*, 88 F. 2d 625, 627 (C. A. 3); *National Labor Relations Board* v. *Ithaca Cotton Mfg. Co.*, 179 F. 2d 504, 507 (C. A. 5); *Jonnua Cotton Mills Co.* v. *National Labor Relations Board*, 176 F. 2d 749, 754 (C. A. 4); *The Fred Smartley, Jr.*, 105 F. 2d 606 (C. A. 4), certiorari denied sub nom. *S. C. Loveland, Inc.* v. *Pennsylvania Sugar Co.*, 309 U. S. 683; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9).

In the early case of *Lewis* v. *Lewis*, 7 How. 776, the question involved the application to a pre-existing cause of action of a newly imposed statute of limitations which provided (7 How. at 776):

> That every action * * * shall be commenced within sixteen years after the cause of such action shall have accrued, and not after; * * *. [Italics supplied.]

This limitation provision initially was inapplicable to suits by persons beyond the limits of the State. Subsequently, the limitation was made

applicable to non-residents as well as to residents, and thereafter a non-resident brought suit on a cause of action which accrued prior to the statute's enactment. Using language fully apposite here, this Court held, in an opinion by Chief Justice Taney, that the time provided by the limitation provision was to be computed from the date the cause of action was first subjected to the operation of the statute (7 How. at 779):

> Upon principle, it would seem to be clear, that it [the time limitation] must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided. For it is at that time that the statute first acts upon it, and limits the period within which suit must be brought.

This principle was followed in *Sohn* v. *Waterson*, 17 Wall. 596. There again, the statute provided (17 Wall. at 597):

> That all actions * * * shall be commenced within two years next after the cause or right of such action shall have *accrued*, and not after. [Italics supplied.]

Suit was thereafter brought on a claim arising more than 4 years prior to the statute's enactment. Approving the Circuit Court's conclusion that the two year limitation provided by the statute was to be computed from the date of the statute's enactment, and not from the date when the cause of action came into existence, the

Court reviewed the various possible applications of such a newly imposed limitation provision to pre-existing causes of action and expressly disapproved the construction under which time running prior to the statute's enactment would be included in the period provided for bringing suit (17 Wall. at 598):

> "When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as those arising in the future. But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction which will enable it to stand, courts have given it a prospective operation."

---

[1] The Court continued (pp. 598–600):

"* * * In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all action existing at the passage of the act, without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is, to construe the statute as applying to such existing actions only as have already run out a portion of the statutory time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be

A comparable result was reached by this Court in *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1. There, the Transportation Act of 1920, 41 Stat. 456, provided (270 U. S. at 2):

> All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action *accrues* and not after. [Italics supplied.]

Again, the Court rejected the argument that the statute had a retroactive effect and held instead that it had no application whatever to causes of action existing at the date of the Act (270 U. S. at 3):

> That a statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication is a rule of general application. It has been applied by this Court to statutes governing procedure, *United States Fidelity and Guaranty Co.* v. *United States*, 209 U. S. 306; and specifically to the limitation of actions under another section of Transportation Act, 1920. *Fullerton-*

---

estimated by the court—leaving all other actions accruing prior to the statute unaffected by it. The latter rule does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation whatever, or, as to them, is unconstitutional, and is a more arbitrary rule than the first. A third construction is that which was adopted by the court below in this case, and which we regard as much more sound than either of the others."

Krueger Lumber Co. v. Northern Pacific Ry. Co., 368 U. S. 836. There is nothing in the language of paragraph 3 of § 16, or in any other provision of the Act, or in its history, which requires us to hold that the three-year limitation applies, under any circumstances, to causes of action existing at the date of the Act.

Thus, the limitation provision in each of these cases was, for all purposes here pertinent, identical to Section 4 (c) of the 1948 Charter Act in that each statute contains the word "accrue" in the same context as Section 4 (c). This Court has uniformly held in each of these cases that, as to claims arising before the statute's enactment, the time for instituting suit was not to be computed from the claim's coming into existence, but rather, at the earliest, from the statute's effective date. In the *St. Louis Ry.* case, particularly, the Court specifically noted that there was nothing in the language of the limitations provision, which included "accrues," to overcome the presumption that the statute was not to operate retroactively. Plainly, therefore, the use of "accrued" in Section 4 (c) does not require, so far as the claim here involved is concerned, that the time for bringing suit is to be computed from February 1945, when the claim arose, rather than from June 1948, when the Charter Act went into effect. And since, apart from the word "accrued," there is nothing in Section 4 (c) which

would in any way support an inference that the limitation provision was intended to apply retroactively, it seems clear that, properly construed, Section 4 (c) is prospective only.

Our position—that the literal meaning of "accrued" is not conclusive as to the determination of when a period of limitations begins to run—is further supported by *Reading Co.* v. *Koons*, 271 U. S. 58. That case involved Section 6 of the Federal Employers' Liability Act (35 Stat. 66, as amended, 45 U. S. C. 56), which provides, substantially like Section 4 (c) of the 1948 Charter Act, that:

> * * * no action shall be maintained under this Act unless commenced within two years from the day the cause of action *accrued*. [Italics supplied.]

Prior to this Court's decision in that case, there had been a diversity of views among the state and lower federal courts as to when the time ran in cases where a personal representative was appointed subsequent to the employee's death. In resolving this confusion by holding that Section 6 required that the action be brought within two years of the injury and not of the appointment of the personal representative, the Court commented (271 U. S. at 61–2):

> This diversity of views [in lower courts] arises principally from the attempt made to find in the word "accrued" used in the statute, some definite technical meaning

> which will in itself enable courts to say at what point of time the cause of action has come into existence and consequently at what point of time the statute of limitations begins to run.
>
> * * * * * *
>
> We do not think it is possible to assign to the word "accrued" any definite technical meaning which by itself would enable us to say whether the statutory period begins to run at one time or the other; * * *"

2, The court below recognized that under newly imposed statutes of limitations the time normally starts from the statute's effective date as to pre-existing claims. However, it ruled that such a construction is appropriate only where rights of private individuals *inter sese* are involved for there, according to the court, "the strained construction was openly resorted to only for the purpose of preventing the statutes from summarily

---

*That "accrued" is not uniformly understood to have a retroactive connotation as to pre-existing causes of action is further evidenced by the fact that two of the district courts which have passed on the question here involved have read "accrued" in Section 4 (c) to mean "acquired." *United States* v. *H. Bowden*, N. D. Ga., No. 195, April 21, 1950, *infra*, pp. 37-38, *United States* v. *Rabinoff*, S. D. Calif., No. 12200-r, January 4, 1951, *infra*, pp. 38-39. Those courts reasoned that, since the 1948 Charter Act created the federally chartered corporation, there was no claim for or against that corporation prior thereto and that it was only upon the transfer of the rights and liabilities of the Delaware Corporation to its federally chartered successor that a right *accrued* to or against the latter.

cutting off existing rights, and for this reason being unconstitutional" (R. 35).[10] Since no problems of constitutionality would be presented by a retroactive application of Section 4 (c) here, where the Government is asserting a claim against a private individual, the court concluded that there was no reason to accord to the Government the benefits of a prospective interpretation of the statute.

While the court below correctly stated that there is no constitutional obstacle to Congress' cutting off at any time the Government's right to sue, its conclusion is a *non sequitur*. In the first place, the court completely overlooked the long established rule that since limitation provisions as applied to the Government are in derogation of the inherent rights of sovereignty, "[s]tatutes of limitation sought to be applied to bar rights of the Government, must receive a strict construction" (*DuPont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 462); "[s]tatutes of limitations against the United States are to be narrowly construed" so as to favor the Government. *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, 650.

[10] At least as between private litigants, there is no question that a newly enacted statutory provision which has the effect of barring (or not allowing a reasonable time in which to assert) a claim would be unconstitutional. *Sturges* v. *Crowinshield*, 4 Wheat. 122, 207; *Edwards* v. *Kearzey*, 96 U. S. 595, 603; *Terry* v. *Anderson*, 95 U. S. 628; *Koshkonong* v. *Burton*, 104 U. S. 668; *Vance* v. *Vance*, 108 U. S. 514; *Wilson* v. *Iseminger*, 185 U. S. 55, 62; *Ochoa* v. *Hernandez*, 230 U. S. 139; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9).

See also, *McMahon* v. *United States*, 342 U. S. 25, 27; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 313–314; *United States* v. *Whited & Wheless*, 246 U. S. 552, 561; *Harp* v. *United States*, 173 F. 2d 761, 763–764 (C. A. 10), certiorari denied, 338 U. S. 816; cf. *United States* v. *Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120, 125. Application of this rule of strict construction to Section 4 (c) fully supports a prospective construction of the statute as far as Government claims predating the enactment of Section 4 (c) are concerned.

Moreover, it is to be noted that Section 4 (c) in terms applies equally to suits "by or against the Corporation." As applied to claims against the Corporation, the retroactive construction adopted by the court below would at least be of doubtful constitutionality, if not clearly unconstitutional.[11] See cases cited fn. 10, p. 21. Since it is settled that statutes are to be construed to avoid doubts as to constitutionality (*American Communications Assn.* v. *Douds*, 339 U. S. 382, 407; *United States* v. *Congress of Industrial Organi-*

---

[11] Withdrawal by the Government of consent to suit without repudiation of the obligation, discussed in *Lynch* v. *United States*, 292 U. S. 571, 581, and in *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 119, is a matter entirely different from the imposition of a limitation provision, which, if construed to apply to preexisting claims against the Government, would have the effect of outlawing such claims so that they may no longer be regarded as governmental obligations.

sations, 335 U. S. 106, 120–121; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–408), it would seem, as the court below recognized (R. 35–36), that in a suit by a private individual against the Corporation, constitutional doubt would proscribe a retroactive construction.[11] In these circumstances, even assuming the premise of the court below that newly enacted statutes of limitations are read prospectively solely to avoid constitutional questions, Section 4 (c) should be construed prospectively as to claims both by and against the Corporation. There is nothing in the 1948 Charter Act to justify treating suits *by* the Corporation differently from those *against* the Corporation. Both are covered by the same phrase.

Finally, the premise of the court below that limitations statutes such as Section 4 (c) are construed prospectively solely to avoid constitutional doubts is erroneous. Wholly apart from constitutional restrictions, which are quite nar-

[11] The proviso in Section 16 of the 1948 Charter Act (15 U. S. C. (Supp. V) 714n), to the effect that "nothing in this Act shall limit or extend any period of limitation otherwise applicable to" claims enforceable against the Delaware Corporation (see fn. 18, *infra*, p. 35), does not eliminate the constitutional problem. The proviso, on its face, is operative only in situations where there would be an otherwise applicable period of limitations. A prospective construction of Section 4 (c) would still be required to avoid constitutional difficulties in regard to claims against the Corporation not included within the terms of the proviso.

row, the courts have consistently been reluctant to apply non-jurisdictional legislation retroactively. *Brewster* v. *Gage*, 280 U. S. 327; *United States* v. *Magnolia Co.*, 276 U. S. 160, 162–163; *Hassett* v. *Welch*, 303 U. S. 303; *Claridge Apartments Co.* v. *Commissioner*, 323 U. S. 141, 164; *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607; and cases cited, *supra*, p. 14. This reluctance stems basically from considerations of fairness and equity, *i. e.*, recognition of the often inequitable results of legislation which interferes with antecedent rights or which ascribes "a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed" (*Un. Pac. R. R. Co.* v. *Laramie Stock Yards*, 231 U. S. 190, 199). It was to give effect to these equitable considerations and not because of considerations of constitutionality that it has become a settled principle that a statute (not involving the jurisdiction of courts) "is not to be given retroactive effect unless such construction is required by explicit language or by necessary implication." *Bruner* v. *United States*, 343 U. S. 112, 117, n. 8. See also, *United States Fidelity Co.* v. *Struthers Wells Co.*, 209 U. S. 306, 314; *United States* v. *Heth*, 3 Cranch 399, 413; *Schwab* v. *Doyle*, 258 U. S. 529, 534; and cases cited *supra*, p. 14 and this page. As stated in *United States* v. *Heth*, *supra*, at 413:

> Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative, that no

other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. This rule ought especially to be adhered to, when such a construction will alter the pre-existing situation of parties, or will affect or interfere with their antecedent rights, services and remuneration; which is so obviously improper, that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.

And the same thought was expressed in *United States Fidelity Co. v. Struthers Wells Co., supra*, at 314:

> There are certain principles which have been adhered to with great strictness by the courts in relation to the construction of statutes as to whether they are or are not retroactive in their effect. The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied.

The considerations of fairness and equity underlying the general rule apply with particular force to newly imposed statutes of limitations

for, apart from constitutional prohibitions, it obviously would be unfair to impose, for the first time, a limitations provision which has the effect of either barring suit completely or allowing insufficient time for instituting proceedings. The rule that newly imposed statutes of limitation normally apply only prospectively is therefore merely one aspect of the general principle applicable to the construction of all legislation, and as such is plainly not based on constitutional grounds alone. *Field Packing Co.* v. *United States*, 197 F. 2d 329 (C. A. 6);* *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190, 199; *Lewis* v. *Lewis*, 7 How. 776, 773; *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1. In these circumstances, whatever the literal meaning of "accrued" as used in Section 4 (c) may be, it falls far short of the "clear, strong and imperative" language (*United States Fidelity Co.* v. *Struthers Wells Co.*, supra, at 314) required to depart from the normally prospective construction of statutes.

B. The legislative history reveals a Congressional intent that Section 4 (c) should be prospective only

Apart from the probability that Congress was aware of the settled judicial construction of

* It is patent from the cases cited by the Sixth Circuit in the *Field Packing* case that the Court of Appeals recognized that the general rule as to prospective operation of newly enacted statutes was fully applicable to new statutes of limitations. See 197 F. 2d at 330.

newly imposed statutes of limitations and acted accordingly (*Shapiro* v. *United States*, 335 U. S. 1, 16; *Morissette* v. *United States*, 342 U. S. 246, 261–263), the legislative history of Section 4 (c) expressly demonstrates that Congress expected it, along with the other provisions of the Charter Act, to be accorded the normal prospective construction in accordance with the usual rules.

1. As it was passed by both the House and Senate and sent to the Conference Committee, the bill which ultimately became the 1946 Charter Act contained a limitation provision applicable only to claims against the Corporation. The Conference Committee for the first time inserted a time limitation on claims by the Corporation by making the [illegible]-year limitation provision applicable to claims by, as well as against, the Corporation. This amendment by the Conference Committee was accepted without [illegible] by both the Senate and the House on June 19, 1946 (94 Cong. Rec. 6122, 6311). In the closing rush of Congressional business preceding its adjournment early in the morning of June 20,*

* The House passed the bill on June 18 (94 Cong. Rec. 6070). On the following day, June 19, the Senate received the House's version of the legislation and appointed conferees (94 Cong. Rec. 6121–6122). On the same day, June 19, the House also appointed conferees (94 Cong. Rec. 6070). The Conference Committee, after meeting and working out a compromise, submitted its compromise bill, together with a brief report (94 Cong. Rec. 6150–6151, 6309–6311), and both the House and Senate approved the bill still on June 19.

The report of the Conference Committee contained only a sketchy explanation of the new limitations provision (H. Rep. 2444, 80th Cong., 2d Sess., p. 6):

> The Senate bill provided that Commodity Credit Corporation should have the immunities of the United States from State statutes of limitations. The House amendment did not contain such a provision. Under the conference substitute a 4-year statute of limitations will apply to suits brought by or against the Corporation.[28]

However, Senator Aiken, who was a member of the responsible Senate Committee, the chairman of the Subcommittee charged with the bill, the manager of the bill on the Senate floor, and the senior Senate conferee, submitted, with unanimous consent, a fuller analysis of the bill reported by the Conference Committee. In his explanation Senator Aiken stated as to Section 4 (c) (94 Cong. Rec. A-4618, A-4619):

> Another change made by the conference committee was to make the proposed 4-year statute of limitations applicable not only to claims against the Corporation but also to claims by the Corporation. The committee felt that the statute of limitations should be applicable to claims by the Corporation as well as to claims against the Corporation. As provided by section

[28] The conference report consisted in most part of the bill which the Conference Committee had worked out.

16, the proposed 4-year statute of limitations will not limit or extend any period of limitation otherwise applicable to claims against the Delaware Corporation. *With respect to claims by the Corporation, the 4-year period of limitations will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the new charter.* [Italics supplied.]

This statement, which demonstrates beyond any doubt that Section 4 (c) was intended to be operative only from the effective date of the 1948 Charter Act, is entitled to great, if not conclusive, weight, for it was made by the member of Congress who by virtue of his responsibilities in the matter was probably the most familiar with the purpose and intent of the Act. Compare *United States* v. *City and County of San Francisco*, 310 U. S. 16, 30–36; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 628; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 650; *McLean* v. *United States*, 226 U. S. 374, 380; *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.* v. *Acme Fast Freight, Inc.*, 336 U. S. 465, 471–476; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479–480.

In addition to Senator Aiken's statement, it is significant that, while the limitation provisions contained in the earlier bills applied solely to

[redacted]

And when S. 1323, as passed by the Senate, came before the House, the latter, on the motion of Representative Wolcott, struck out everything after the enacting clause in S. 1323 and substituted as an amendment the provisions of H. R.

2990, which the House Agriculture Committee had considered and reported favorably with amendments. H. Rep. No. 1790, 80th Cong., 2d Sess. The House substitute bill recommended a four-year period of limitations on claims against the Corporation but provided no limitation on claims by the Corporation.* 94 Cong. Rec. 9666. The statement in the House Committee's report to the effect that "[t]he 4-year limitation upon the right to bring suit against the Corporation represents a length of time believed fair to both the plaintiff and the Corporation" (H. Rep. No. 1790, 80th Cong., 2d Sess., p. 10) again indicates that the Committee intended the plaintiff to have the full four years within which to institute suit—an intention which would be fully effectuated as to pre-enactment claims only if the limitations period is completely prospective.

The responsible committees of both the Senate and House obviously regarded the time limit provided on suits against the Corporation as prospective only and fixed the time for instituting such actions on the basis of what each regarded as "fair to both the plaintiff and the Corporation." This strongly suggests that, in ultimately imposing a limitation on suits by the Corporation, Congress recognized that fairness to the Corporation and the defendant likewise required that the

*The House bill omitted the provision as to exemption of claims by the corporation from state statute of limitations which the Senate had included as a precautionary measure.

Corporation should have at least the full period for instituting suit. In addition, not only is there nothing in the legislative history even suggesting that Congress intended to impose a more restrictive limitation upon the institution of suits by the Corporation than upon actions against it, but it is significant that, prior to the imposition of the limitation on actions by the Corporation, at least the Senate bill went out of its way to make clear that such actions were not to be subject to any time limitations. In the light of these considerations, it seems clear that when Congress finally subjected claims by the Corporation to a statute of limitations, it intended that the limitation should not apply retroactively to preexisting claims by the Corporation, and should not cut them off summarily or allow an unreasonably short time for instituting suit.

2. The court below declined to give any effect to this legislative history of Section 4 (c) "in view of the clear language of the section under consideration" (R. 36). This refusal was erroneous, since as we have shown, *supra*, pp. 12–26, the word "accrued" does not have the clear meaning ascribed to it by the court in regard to claims arising prior to the imposition of the time limitation.

Moreover, even if "accrued," as applied in such a situation, clearly meant what the court below said it did, it does not follow that the court nevertheless should not have given to the legis-

lative history its appropriate weight as an aid to statutory construction. This Court has not enunciated any rule, consistently adhered to, which forbids reference to legislative history where the statutory language appears to be clear. The decisions in which this Court has looked to legislative history as a guide to statutory construction are legion. They involve all kinds of cases and types of statutes. See, *e. g.*, *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 472; *Queen* v. *United States*, 260 U. S. 178, 194; *Armstrong Co.* v. *Nu-Enamel Corp.*, 305 U. S. 315, 333; *United States* v. *American Trucking Assns.*, 310 U. S. 534, 542–4; *United States* v. *Dickerson*, 310 U. S. 554, 562; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *Walling* v. *Portland Terminal Co.*, 330 U. S. 148; *Cabell* v. *Markham*, 148 F. 2d 737, 739 (C. A. 2), and cases there cited, affirmed, 326 U. S. 404, 409; *Chicago & Southern Air Lines, Inc.* v. *Waterman SS Corp.*, 333 U. S. 103, 108; *Schwegmann Bros.* v. *Calvert Distilling Corp.*, 341 U. S. 384, 390–395, 399; *Johansen* v. *United States*, 343 U. S. 427, 432; *United States* v. *Public Utilities Commission*, 345 U. S. 295, 315–316; see also cases cited in *Commissioner* v. *Estate of Church*, 335 U. S. 632, 667–9 (Appendix to opinion of Frankfurter, J., dissenting).

Such resort to legislative history is proper even where the statutory language appears to be clear, for the ultimate objective in construing a statute is to effectuate the policy of Congress, and

since "words are inexact tools at best * * *" there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on "superficial examination"." *United States* v. *American Trucking Assns.*, [*supra*]. See also *United States* v. *Dickerson*, [*supra*]." *Harrison* v. *Northern Trust Co.*, *supra*, at p. 479. And where adherence to literal language would create incongruities and produce results "plainly at variance with the policy of the legislation as a whole" (*Ozawa* v. *United States*, 260 U. S. 178, 194), that result, this Court has frequently held, justifies following "that purpose, rather than the literal words" (*United States* v. *American Trucking Assns.*, 310 U. S. 534, 543). See, also *Lawson* v. *Suwannee SS Co.*, 336 U. S. 198, 201, 206; *United States* v. *Public Utilities Commission*, 345 U. S. 295, 315–316; *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50, 55; *United States* v. *Dickerson*, 310 U. S. 554, 562.

These principles are fully applicable here, for, as has been shown, *supra*, pp. 26–32, the legislative history clearly reveals a Congressional intent that Section 4 (c) should be prospective only. Moreover, the construction below reaches the incongruous result that Section 4 (c) is retroactive in regard to claims *by* the Corporation at the same time that it is prospective only as to claims

against the Corporation." Not only is there no justification in the Act or its legislative history for such a distinction, but it attributes to Congress, which is vitally concerned with the fiscal position of the Government, the anomalous intention of allowing a far longer period to enforce claims against the Corporation than that given the Corporation to enforce its claims against private persons. In these circumstances, even if the literal meaning of "accrued" were as clear as the court below held it to be, it must give way to the plain purpose and policy of Section 4 (c)."

"The court below recognized the incongruity of its position, but indicated that "we do not think it would be too embarrassing to give the statutory language one meaning in the situation before us, and another in the converse situation of a suit against Commodity * * *" (R. 36).

"That Congress did not intend by Section 4 (c) to bar or unreasonably curtail the time for instituting action on claims predating the statute is further evident from Section 16 of the Charter Act (15 U. S. C. (Supp. V) 714n) which provides:

"* * *The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

This care not to curtail time limitations otherwise applicable shows, we believe, Congress's general purpose to provide a reasonable time to institute suit on preexisting claims. This legislative intention should apply to claims by the Corporation as well as those against it. For we have shown

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded for further proceedings."

ROBERT L. STERN,
Acting Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
PAUL A. SWEENEY,
MELVIN RICHTER,
JOHN G. LAUGHLIN,
Attorneys.

NOVEMBER 1953.

---

supra, pp. 22–23, 34–35, that Section 4 (c) in terms applies equally to claims "by or against the Corporation" and there is nothing in the Act's legislative history to suggest that Congress intended to impose a more restrictive limitation on claims by the Corporation than on those against the Corporation. It was unnecessary to insert a proviso, similar to that in Section 16, with respect to claims by the Corporation, since there was no federal statute applicable and state limitation provisions could not bar suits by the United States (see, *e. g.*, *United States* v. *Summerlin*, 310 U. S. 414, 416). See fn. 7, *supra*, p. 11.

* Respondents' brief in opposition (pp. 6–7) urges that the judgment below is supportable, apart from the construction of Section 4 (c), on the ground that the Government's complaint failed to state a cause of action. Both the District Court and the court below, however, based their judgments solely on the construction of Section 4 (c); neither court reached or passed upon the sufficiency of the complaint. In these circumstances, we believe that this Court should not pass upon this additional contention at this time but instead should leave it open for consideration by the lower courts upon remand.

APPENDIX

In the United States District Court for the Northern District of Georgia

Civil Action No. 195

UNITED STATES OF AMERICA

v.

H. BOWDEN

ORDER DENYING MOTION TO DISMISS

In his plea and answer and the amendment thereto, the defendant contends that this suit is barred by state and Federal Statutes of Limitations.

State Statutes of Limitation are inapplicable where the Federal Statute prescribes a limitation of time within which the action must be brought. Therefore, I find it unnecessary to consider the effect of the pertinent Statute of Limitations of the State of Georgia.

Section 4c of the Commodity Credit Corporation Charter Act as amended June 7, 1949, provides in part as follows: "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought."

Prior to this enactment, there was no limitation within which the United States or its agency, the original Commodity Credit Corporation (a

Delaware corporation) might take action on this claim. When that corporation was dissolved and its assets transferred to the new Commodity Credit Corporation (a Federal corporation) as at midnight, June 30, 1948, the above quoted section then containing a four-year period of limitation became operative as to this claim. By the amendment of June 7, 1949, the period of limitation was extended to six years. It is seen that the Federal corporation thus acquired the claim on July 1, 1948 and brought this suit on January 6, 1950, well within the statutory limitation.

The Motion to Dismiss contained in Count One of the plea and answer filed February 11, 1950, and Count One (A) of the amended plea and answer filed on March 6, 1950 are each denied.

This April 21, 1950.

M. NEIL ANDREWS,
United States District Judge.

In the United States District Court, Southern District of California, Central Division

Honorable LEON R. YANKWICH, *Judge*

No. 12290-Y

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATE E. RABINOFF, HARRY FAUST, AND GLENS FALLS INDEMNITY COMPANY, A CORPORATION, DEFENDANTS

DECISION ON MOTIONS

The motions of the defendants Nate E. Rabinoff, Harry Faust and Glens Falls Indemnity

Company, a corporation, to dismiss the complaint in the above-entitled cause, heretofore argued and submitted, are now decided as follows:

I am of the view that the right of action of the plaintiff did not accrue until it acquired the rights transferred to it by the Commodity Credit Corporation of Delaware on the 30th day of June, 1948. Before that time, it had no enforceable claim against any of the defendants. Under Section 714 (b) of Title 15 U. S. C. A., as amended, the plaintiff had six years after the right accrued to bring suit. The present action, instituted on September 18, 1950, was well within that period.

The motions to dismiss and each of them will, therefore, be and are hereby denied.

Dated this 4th day of January, 1951.

LEON R. YANKWICH,
Judge.

U. S. GOVERNMENT PRINTING OFFICE: 1952

IN THE

Supreme Court of the United States

October Term, 1952

No. [redacted] 94

UNITED STATES OF AMERICA,
Petitioner,

vs.

HAROLD T. LINDSAY, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

EDWARD C. PARK,
73 Tremont Street,
Boston, Massachusetts,
Attorney for Respondents.

LAWYERS BRIEF & PUBLISHING CO.
BOSTON, MASS.

SUBJECT INDEX.

	PAGE
Opinions Below and Jurisdiction	1
Questions Presented	1
Statutes Involved	2
Statement	3
Reasons for Denying the Writ	4
1. The decisions below are clearly correct	4
2. The judgment is correct apart from the issue of limitations	6
3. The issue of limitations ought not to be drawn before the Court in this case	7

Citations of Cases.

Field Packing Company v. United States, 197 F. 2nd 329	5, 6
Sohn v. Waterson, 17 Wall. 596	4

Statutes.

Section 4 c of the Act, 62 Stat. 1070, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156, 15 U. S. C. sec. 714 b (c)	1, 2, 5, 6
Section 16 of the Act, 62 Stat. 1075, 15 U. S. C. section 714 n	2, 3, 5

IN THE

Supreme Court of the United States

October Term, 1962

No. 582

UNITED STATES OF AMERICA,

Petitioner,

vs.

HAROLD T. LINDSAY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below and Jurisdiction

The respondents adopt the statements of the petitioner with respect to the opinions below and the jurisdiction of the Court.

Questions Presented

The petition is directed to, and the Courts below considered, only the question whether the suit was barred under Section 4(c) of the Commodity Credit Corporation

Charter Act of 1948, as amended, hereinafter called the Act, because not brought within six years after the right accrued.

If the petition is granted the respondent proposes to raise the additional question whether the judgment is correct, irrespective of the language of said Section 4(c), because the complaint fails to state a claim upon which relief can be granted. This question as well as that to which the petition is directed was raised by the defendants' motions to dismiss (R. 37-39).

Statutes Involved

Section 4 c of the Act, 62 Stat. 1070, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156, 15 U. S. C. sec. 714 b (c) provides in part:

> "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, . . . Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of the subsection (c) of this section to the same extent as though such suit were by or against the Corporation, . . ."

Section 16 of the Act, 62 Stat. 1075, 15 U. S. C. section 714 n, provides:

> "The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation, are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation,

a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

Statement

The claim upon which the suit was brought was one which belonged to Commodity Credit Corporation, a Delaware corporation, and was transferred to the Corporation created by the Act by Section 16. The defendants were Lindsay, an agent of the Delaware corporation described as a Handler under a contract dated July 14, 1944, his sureties, and Draper & Company, Inc. a warehouseman. The damages occurred not later than February 26, 1945. The suit was commenced on February 29, 1952 (R. 1).

The claim against Lindsay was under the contract, and particularly on Lindsay's promise to "provide proper storage, upon the terms and conditions hereinafter specified, for the wool received by the Handler" and to "take such action as may be necessary to keep such wool in good condition" (R. 21-22). The petitioner's statement fails to mention that among the "terms and conditions" thereafter specified was an agreement on the part of the Delaware corporation that, unless it required the Handler to insure the wool, it would "indemnify and save the Handler . . . harmless from any loss or damage to the wool after it is placed in the warehouse . . . provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool" (R. 22). The petitioner's statement also fails to mention that there was no allegation of any requirement that Lindsay insure the wool while in storage, or of any failure on his part to use due care.

The claim against Draper & Company, Inc. was based solely on the fact that the wool involved was delivered to it for storage in good condition and was returned in damaged condition. The petitioner's statement fails to mention that there was no allegation that the warehouseman was negligent.

The defendants' motions to dismiss pointed out the failure to allege negligence on the part of either Lindsay or of Draper & Company, Inc., as well as the fact that "the right of action set forth in the complaint did not accrue within six years next before the commencement of the action."

Reasons for Denying the Writ

1. The decisions below are clearly correct.

Both the District Court and the Court of Appeals concluded that "the right accrued on which suit is brought" when the cause of action came into existence. This, the petition admits (p. 6), was on or about February 26, 1945.

The petition does not contend that the limitations imposed by the Act were wholly prospective and therefore inapplicable to causes of action arising prior to its enactment, but merely that the word "accrued" should not be given its natural and literal meaning. It is admitted that there is no constitutional reason for giving it another meaning, as in cases between private litigants such as *Sohn v. Waterson*, 17 Wall. 596, since Congress might cut off at any time the Government's right to sue. But it is suggested (1) that there might be a constitutional objection to a curtailment of the right to sue the Corporation created by the Act, and (2) that "there is nothing in the Act to justify treating suits by the Corporation differently from those against the Corporation" (Petition, p. 10).

Both these points are without merit. When Congress created the Corporation, it need not have made it liable for any of the debts of the Delaware corporation. Certainly, if it made the new corporation liable for any of the debts of the Delaware corporation, it could limit that liability to claims which had come into existence within some specific period. Congress could have expressly made state statutes of limitations applicable to claims against the corporation, or have provided a uniform period within which to bring suits to enforce such claims. The proviso in Section 16: "That nothing in this Act shall limit or extend any other period of limitation otherwise applicable to such claims against the Corporation", shows clearly that Congress recognized these possibilities. The proviso was, of course, intended to make certain that state statutes of limitations otherwise applicable to the liabilities assumed by the Corporation should not be affected. Whether Congress believed that such a provision was required for constitutional reasons needs no debate. No language, however, could show more clearly that suits by the Corporation were to be treated differently than those against it. The plain inference of the proviso is that suits by the Corporation, or by the United States as the real party in interest, would be barred by the limitations in section 4c, and only by those limitations, whether the effect was to limit or extend periods otherwise applicable.

Field Packing Company v. United States, 197 F. 2nd 329, cited by the petitioner as in conflict with that of the Court of Appeals, is so only on the face of the opinion. The contentions actually made by the defendant in that case were that the causes of action involved were barred by the four-year period of limitations, found in the original Act of 1948, before the amendment of June 7, 1949, extending

the period of limitations to six years, and that Congress could not retroactively remove the bar. It was assumed by counsel for the defendant, without supporting argument in his briefs, that the four-year period began to run when the cause of action came into existence. It is not clear from the *per curiam* opinion in the Field case whether the Court then concluded that the limitations of section 4c of the Act were not applicable to causes of action existing at its passage, or whether it translated the words "after the right accrued", when applied to such causes of action, as meaning "after the passage of the Act."

2. The judgment is correct apart from the issue of limitations.

The complaint clearly fails to state a claim against any of the defendants upon which relief can be granted.

Since the contract with the defendant Lindsay expressly provided that petitioner would indemnify that defendant against any loss or damage to the wool "provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool", an allegation of negligence was essential.

The defendant Draper & Co., Inc., was not, of course, an insurer because the wool was stored in its warehouse. An allegation of its negligence was required to show liability on its part.

The failure of the petitioner to allege negligence on the part of any defendant ought not to be regarded as merely a formal defect, subject to cure by amendment. The damage to the wool must have been discovered by the Delaware corporation on February 26, 1945. The seven years that elapsed before suit was brought were ample time to investigate the circumstances and to determine whether there

was any actual fault on the part of the defendants. The resistance made by the defendants and their sureties to a claim amounting to only $1127.03 over a period of more than seven years, taken in connection with the failure to allege negligence in the complaint, warrants an inference that no such fault has been claimed. Certainly, as a practical matter, if there were evidence of negligence to meet, it would be cheaper for the defendants to pay the claim than to try it. The attorneys for the United States would not have hesitated to allege negligence if they could have conscientiously done so.

3. The issue of limitations ought not to be drawn before the Court in this case.

The proper administration of justice ought not to put the citizen to the choice of resisting a claim made by the Government upon a legal issue deemed important by its agents, or of waiving the defense in order to save expense incommensurate to the amount in controversy. The respondent can recover no costs in the Court of Appeals nor in this Court, though successful in maintaining its contentions. If, as stated in the petition, Commodity Credit Corporation has about 141 claims, totalling $1,250,000., some of them must be cases in which only the question of limitations is involved and large enough to warrant the expense of coming to this Court.

We submit that, even if the Court has doubt as to the propriety of the decision below, it ought not in its discretion to undertake to review a judgment involving so small an amount and so plainly correct on other grounds.

Respectfully submitted,

EDWARD C. PARK,
Attorney for Respondents.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA,
Petitioner,

vs.

HAROLD T. LINDSAY, *ET AL.*

BRIEF FOR RESPONDENTS

EDWARD C. PARK,
73 Tremont Street,
Boston, Massachusetts,
Attorney for Respondents.

LAWYERS' BRIEF & PUBLISHING CO.
BOSTON, MASS.

SUBJECT INDEX.

PAGE

Opinions Below 1

Jurisdiction 1

Statement of the Case 2

The Statute Involved 6

Summary of Argument 7

Argument 8

1. The Statute of Limitations is a bar 8

2. The complaint fails to state a claim against the defendants upon which relief can be granted .. 21

Table of Cases.

Central States Grain Co-Operative vs. Nashville W & E Corp., 48 F. (2d) 138, 140 23

Chase Securities Corp. v. Donaldson, 325 U. S. 303, 316 ..... 14, 15

Cummings vs. Deutsche Bank, 300 U. S. 115, 119 12

Dorsey vs. Reconstruction F. Corp., 101 F. S. 197, 199, aff. 197 F. 2nd 468 (C.A.-7) 19

Federal Housing Administration vs. Burr, 309 U. S. 242 12

Field Packing Company vs. United States, 197 F. 2nd 329 14

Guaranty Trust Co. of N. Y. vs. United States, 304 U. S. 126, 136 15

Humphrey's Executor vs. United States, 295 U. S. 602, 625 20

J. E. Riley Investment Company vs. Commissioner of Internal Revenue, 311 U. S. 55, 59 5

Keifer vs. Reconstruction Finance Corp., 306 U. S. 81 .. 12

Lynch vs. United States, 292 U. S. 571, 581 12

PAGE

Miller vs. Robertson, 266 U. S. 243, 250 9
Montana-Dakota Util. Co. vs. Northwestern P. S. C., 341 U. S. 246, 250 5
Old Colony Trust Co. vs. Commissioner, 301 U. S. 379, 383 9
Reconstruction F. Corp. vs. Foster Wheeler Corp., 70 F. S. 420 19
Reconstruction Finance Corp. vs. J. G. Menihan Corp., 312 U. S. 81 12
Sanderson vs. Portal Life Insurance Co., 72 F. 2nd 894, 896 5
Sheridan-Wyoming Coal Co. vs. Krug, 168 F. (2d) 557 .. 22
Sohn vs. Waterson, 17 Wall. 596 .....8, 9, 11, 12, 14
Stanley vs. Schwalby, 147 U. S. 508 13
Stanley vs. Schwalby, 162 U. S. 255 13
Superior Engraving Co. vs. National Labor Rel. Board, 183 F. 2nd 783, 790 (C.A.-7) 11
The Fred Smartley, Jr., 108 F. 2nd 603, 608 (CCA-4) .. 16
Unexcelled Chemical Corporation vs. United States, 345 U. S. 59 8
Union P. R. Co. vs. Laramie Stockyards Co., 231 U. S. 190, 199 17
United States F. & G. Co. vs. Struthers Wells Co., 209 U. S. 306 17
United States v. H. Bowden, unreported 14
United States v. Rabinoff, unreported 14
United States vs. Edgerton & Sons, Inc., 178 F. 2nd 763 (C.A.-2) 18
United States vs. St. Louis, S. F. & T. R. Co., 270 U. S. 1 14
United States vs. St. Paul, M. & M. R. Co., 247 U. S. 310, 318 21
Wilson vs. Iseminger, 185 U. S. 55, 60 15
Wrightman vs. Boone County, 88 F. 435, 436 (CCA-8) .. 16
Zimmerman vs. National Dairy Products Corp., 30 F. Supp. 438 22

III.

Statutes.

PAGE

Commodity Credit Corporation Charter Act, of June 29, 1948, c. 704, 62 Stat. 1070, as amended June 7, 1949, c. 175, #5, 15 U. S. C. A. 714 2
Section 4 (e), 15 U. S. C. A. sec. 714 b(e) 6, 15, 18
Section 16, 62 Stat. 705, 15 U. S. C. A. sec. 714n 6, 7, 9, 13, 17
Massachusetts General Laws (Ter. Ed.) C. 105, sec. 27 .. 22
Portal-to-Portal Act of 1947, Section 6 8
Walsh-Healey Act 8

Miscellaneous.

94 Cong. Rec. Part 12, 80th Congress, 2nd Session—Appendix, pages 4408-4409 20
Federal Rules of Procedure 22
Senate Report No. 1022 on the Act, U. S. Code Congressional Service, 1948, Vol. 2, p. 2149 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA,
Petitioner,

vs.

HAROLD T. LINDSAY, *ET AL.*

BRIEF FOR RESPONDENTS

Opinions Below

The opinion of the United States District Court for the District of Massachusetts (R. 28-30) is reported at 105 F. Supp. 667. The opinion of the Court of Appeals (R. 33-36) is reported at 202 F. 2nd. 293.

Jurisdiction

The judgment of the Court of Appeals was entered on February 26, 1953 (R. 36). The petition for a writ of certiorari was filed on May 26, 1953, and granted on October 12, 1953 (R. 39). The jurisdiction of this Court was invoked under 28 U. S. C. 1254 (1).

Statement of the Case

The judgment of the District Court, affirmed by the Court of Appeals, was founded upon motions to dismiss the action upon various grounds, among them "that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action" (R. 26-28). The Courts below based their decisions solely on that ground, and did not consider the other objections to the complaint.

The action was by the United States on a claim of Commodity Credit Corporation, hereinafter called the Corporation, created by the Commodity Credit Corporation Charter Act, 15 U. S. C. Supp. 714. The claim was originally one belonging to Commodity Credit Corporation, a Delaware corporation of the same name, hereinafter called Commodity, to which the Corporation succeeded pursuant to the terms of the Act by which it was created.

The purpose of the action was to recover "for damage to wool owned by Commodity and stored in the Draper and Company warehouse" (R. 2). The damage is alleged to have occurred not later than February 26, 1945 (R. 3-4).

The complaint was in two counts. The first count claims damages from the defendant Harold T. Lindsay, hereinafter called the Handler, and his sureties. The second count claims the same damages from Draper & Company, Inc., hereinafter called the Warehouseman.

The complaint alleges that the Handler entered into a Wool Handler's Agreement, a copy of which was annexed, with Commodity to purchase, handle, store, and sell domestic wool for the account of Commodity. Pertinent provisions of the Agreement with respect to the Handler's obligation to store wool are as follows (R. 15-16):

"STORAGE OF WOOL.

"15. *General.* The Handler shall, subject to the right of Commodity to direct where the wool shall be stored, provide proper storage, upon the terms and conditions hereinafter specified, for the wool received by the Handler for purchase hereunder and shall take such action as may be necessary to keep such wool in good condition * * * Notwithstanding any other provision hereof, Commodity shall have the right at any time it determines the wool is improperly stored hereunder to require any such wool to be rewarehoused at the Handler's expense in such facilities as Commodity may specify.

* * * * *

"(b) *Warehouse Insurance.* The Handler shall not, unless otherwise indicated in the space below, be obligated to insure the wool received hereunder after it is placed in the warehouse, and, unless the Handler is obligated to insure the wool, Commodity shall indemnify and save the Handler or producer, pool, or secondary handler from which such wool was received harmless from any loss of or damage to the wool after it is placed in the warehouse or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool."

Paragraph X of the First Count alleges, in part (R. 3):

"Pursuant to the Wool Handler's Agreement aforesaid, the defendant handler held in its custody wool acquired and stored for the account of Commodity. When acquired the wool was in a good and undamaged condition. Under the terms of the Wool Handler's

Agreement aforesaid, the defendant handler was obligated to provide proper storage for the wool and to take such action as necessary to keep the wool in good condition. In violation of said Wool Handler's Agreement on or about February 26, 1945, 17,245 pounds of said domestic wool in grease were returned to Commodity in a wet and damaged condition. The damages to said wool were caused by the failure of the defendant handler to perform his obligations under the terms of the contract, as amended, to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition."

There is no other allegation of any violation of duty by the Handler.

Paragraph II of the Second Count alleges (R. 4):

"During 1944, various quantities of wool belonging to Commodity were delivered for storage to the defendant, Draper and Company, Inc. by the wool handler, Harold T. Lindsey. When delivered to the defendant, Draper and Company, Inc., the wool was in a good and undamaged condition. On or about February 26, 1945, 17,245 pounds of the wool were returned to Commodity in a wet and damaged condition."

There is no other allegation of any violation of duty by the Warehouseman.

The motions to dismiss by the Handler and its sureties were on the following grounds (R. 26-28):

"1. Because the complaint fails to state a claim against defendant upon which relief can be granted;

"2. Because the complaint discloses that the wool was stored under a written agreement between Commodity and this defendant that Commodity would

indemnify and save this defendant harmless from any loss or damage to the wool or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of this defendant or his agents to use due care in regard to the wool.

"2. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action."

The motion to dismiss by the Warehouseman was on the following grounds (R. 27):

"1. Because the complaint fails to state a claim against the defendant upon which relief can be granted;

"2. Because the complaint does not allege that any loss or injury to the wool was caused by this defendant's failure to exercise such care in regard to the wool as a reasonably careful owner of similar goods would exercise.

"3. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action."

We assume that in this Court all the objections to the complaint may be urged, and that the question is whether the judgment was correct.

J. E. Riley Investment Company vs. Commissioner of Internal Revenue, 311 U. S. 55, 59;

Montana-Dakota Util. Co. v. Northwestern P. S. C., 341 U. S. 246, 250.

Sanderson vs. Portal Life Insurance Co., 72 F. 2nd 894, 896.

The Statute Involved

Section 4 (c) of the Commodity Credit Corporation Charter Act of June 29, 1948, c. 704, 62 Stat. 1070, as amended June 7, 1949, c. 175, #5, 15 U. S. C. A. sec. 714 b(c), provides, in part:

"No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, or (2) in the event that the person bringing such suit shall have been under legal disability or beyond the seas at the time the right accrued, the suit shall have been brought within three years after the disability shall have ceased or within six years after the right accrued on which suit is brought, whichever period is longer. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided*, That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit * * * Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of this subsection (c) of this section to the same extent as though such suit were by or against the Corporation, * * *"

Section 16 of the Act, 62 Stat. 705, 15 U. S. C. A. sec. 714n, provides:

"The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation,

are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

Summary of Argument

The Statute bars this suit brought on February 29, 1952, on a cause of action accruing not later than February 26, 1945. The natural and literal meaning of its words is to bar suits on rights accrued before the passage of the Act as well as thereafter. There are no constitutional objections to giving the language its natural effect. The public policy which dictated limitations on the enforcement by suit of rights of the Corporation is applicable to causes arising before the enactment as well as after it. The proviso in section 16, 15 U. S. C. A. 714n, that nothing in the other provisions of the Act "shall limit or extend any period of limitation otherwise applicable to such claims *against* the Corporation" (italics ours) indicates that Congress intended that the enforcement of claims of Commodity *by* the Corporation should be so limited or extended. The legislative history of the Act also leads to that conclusion.

In any event no cause of action is stated in the complaint against any of the respondents since it is not alleged

that either the Handler or the Warehouseman was negligent.

Argument

1. THE STATUTE OF LIMITATIONS IS A BAR.

The words: "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought", if given their natural and literal meaning, are as applicable to rights accrued before the enactment as to those arising thereafter.

This Court at its last term decided that an action by the United States to recover for violations of the Walsh-Healey Act during the years 1942-1945 was barred by the provision in Section 6 of the Portal-to-Portal Act of 1947 that "every such action shall be forever barred unless commenced within two years after the cause of action accrued."

Unexcelled Chemical Corporation vs. United States, 345 U. S. 59.

Indeed, the petitioner relies upon *Sohn v. Waterson*, 17 Wall. 596, and the cases which follow it, and quotes in its brief, at page 16, from the opinion in that case:

> "When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as to those arising in the future."

We suppose, therefore, that the petitioner does not contend that the Statute here involved is inapplicable, but only that the period of limitations in this case runs

not from the date when the right accrued on which suit is brought, but from the effective date of the Statute. It is not urged, however, that with respect to causes of action created after the passage of the Act the word "accrued" should be given any meaning other than its normal one of "arose." Petitioner's brief concedes (p. 12) that "'accrued', as applied to after-arising claims, undoubtedly is equated with the time the causes come into existence." What the petitioner asks the Court to do is to read the Act as if it described the period of limitations as: "six years after the right accrued on which suit is brought, or, except with respect to claims against the Corporation to which some other period of limitation is applicable, six years after the passage of the Act, if the right arose prior thereto." It is, of course, necessary to introduce the exception into the second alternative because of the express provision in Section 16 of the Act "That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

But the words of a statute are to be read in their natural and ordinary sense unless some strong reason appears to the contrary.

Miller v. Robertson, 266 U. S. 243, 250;
Old Colony Trust Co. v. Commissioner, 301 U. S. 379, 383.

There is no reason, such as appeared in *Soho v. Waterson, supra*, and other cases cited by the petitioner, for adopting a strained construction of the plain language of the Act.

In that case, the statute required that an action be brought "within two years next after the cause or right of such action shall have accrued." The plaintiff contended that

it could not apply to the suit in question, because the cause of action had accrued more than two years prior to the passage of the Act, so that the Act would cut off and defeat the right altogether and thus impair the obligation of contracts. The Court said earlier in its opinion:

> "A literal interpretation of the statute would have this effect."

And, again, in language also quoted in petitioner's brief (p. 16):

> "But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the Legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction that will enable it to stand, courts have given it a prospective operation. In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all actions existing at the passage of the Act without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is, to construe the statute as applying to such existing actions only as have already run out a portion of the statutory time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be estimated by the court—leaving all other actions accruing prior to the statute unaffected by it. The latter rules does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation whatever, or, as to

them, is unconstitutional, and is a more arbitrary rule than the first."

The Court, therefore, adopted a third construction, that of the trial court, by which the statute was held applicable not only to future causes of action but also to those already accrued, but the period of limitations was deemed to run with respect to the latter only from the date of the passage of the Act.

Sohn v. Waterson has been frequently cited and followed in the federal courts. The respondents do not question its authority as a precedent.

But this case does not require that the words "within six years after the right accrued" be construed any differently with respect to rights existing before the date of the Act than to those arising thereafter. No constitutional question is involved. The United States could constitutionally release any claims of Commodity or impose such limitations upon their enforcement as it pleased, as petitioner's brief concedes (p. 21).

Superior Engraving Co. v. National Labor Rel. Board, 183 F. 2nd 783, 790 (C.A.-7).

Footnote 1. "It might also be observed that the rule of construction established by such cases as *Sohn v. Waterson* is applicable only to limitation statutes affecting private as distinguished from public rights, and that the National Labor Relations Act creates no private, vested rights, but only public rights which are at all times subject to the control of the legislature."

It is, however, urged by the petitioner (Brief pp. 22-23) that section 4(c) applies equally to suits "by or against the Corporation"; that it is at least doubtful whether Congress could create a bar of limitations applicable to suits against

the Corporation if the prescribed period commenced, before the passage of the Act, when the right of action arose, so that the rule of *Soha v. Waterson, supra*, should be applied to suits against the Corporation; and that there is nothing in the Act to justify treating suits by the Corporation differently from those against the Corporation.

This argument seems clearly unsound. In the first place, when Congress created the Corporation it did not have to impose a liability on it for claims against Commodity. Nor did it need to provide that the Corporation could be sued. If suit were permitted, the consent to sue might be withdrawn at any time.

Lynch v. United States, 292 U. S. 571, 581.

"Although consent to sue was thus given when the policy issued, Congress retained power to withdraw the consent at any time. For consent to sue the United States is a privilege accorded; not the grant of a property right protected by the Fifth Amendment. The consent may be withdrawn, although given after much deliberation and for a pecuniary consideration."

Cummings v. Deutsche Bank, 300 U. S. 115, 119.

"The consent of the United States to be sued was revocable at any time."

We assume that there is no dispute as to the power of the United States to grant its corporate agencies immunity from suit, even though there is no presumption of such immunity.

Reconstruction Finance Corp. vs. J. G. Menihan Corp., 312 U. S. 81.

Federal Housing Administration v. Burr, 309 U. S. 242.

Keifer vs. Reconstruction Finance Corp., 306 U. S. 81.

Since Congress might have granted the Corporation complete immunity from suits against it for liabilities of Commodity, we see no constitutional difficulty in granting it partial immunity, that is, after the expiration of six years from the date when the right of action accrued.

In the second place, the Act does expressly provide in Section 16 that suits by the Corporation be treated differently from those against the Corporation on liabilities of a Commodity. It keeps in force state statutes of limitations applicable to suits against the Corporation to enforce liabilities of Commodity. The United States, and its agencies, are entitled to take the benefit of such statutes.

Stanley v. Schwalby, 147 U. S. 508.
Stanley v. Schwalby, 162 U. S. 255.

Since the Act does not limit or extend the periods of limitation prescribed by state statutes with respect to claims against the Corporation accruing prior to the passage of the Act, no constitutional question could arise except in a case to which no state statute was applicable. The possibility of such a case seems to us too remote to require it to be considered. It could only arise in a suit brought more than six years after the right accrued. As the Court of Appeals said in its opinion (R. 36):

> "It will suffice to say that we see no reason to give the statutory language a strained construction in the situation before us merely because on the authorities perhaps we might have to give it a strained construction to save its constitutionality in a situation the converse of the one under consideration."

All of the cases cited by the petitioner on page 14 of its brief as holding that, with respect to claims arising prior to the enactment of a Statute of Limitations, the period begins to run from its effective date, were suits to enforce private

rights and not those of the United States, and are distinguishable if for that reason alone. It seems unnecessary to consider other distinctions.

Field Packing Company v. United States, 197 F. 2nd 329, a *per curiam* opinion, apparently supports the petitioner's position. It is not clear, however, from the opinion whether the Court concluded that the statute of limitations in section 4c of the Act was applicable at all to causes of action existing at its passage, or whether it applied the rule of *Sohn v. Waterson*. It cited that case, but also cited *United States v. St. Louis, S. F. & T. R. Co.*, 270 U. S. 1, in which an amendment to a federal statute of limitations shortening the period was held not applicable in any manner to existing causes of action. In fact, the record in the Field Packing Company case, and the briefs, though not the opinion, disclose that the question decided was not that involved in this case. The contentions actually made there in behalf of the defendant were that the suit was barred by the expiration of the four-year period prescribed in the original Act before the amendment effected by the Act of June 7, 1949, extending the period to six years, and that Congress could not constitutionally remove the bar. It was assumed by counsel for the defendant, without supporting argument, that the period began to run when the right arose. The decision appears to have been correct on its facts. The extension of the period of limitations did not violate the defendant's constitutional rights.

Chase Securities Corp. v. Donaldson, 325 U. S. 303, 316.

The unreported opinions in the District Court cases, *United States v. H. Bowden*, and *United States v. Rabinoff*, copies of which are printed as an appendix to petitioner's brief, appear to support its position. We do not know how

much benefit the District Courts derived from argument for the defendants in those cases.

In addition to the argument based on constitutional grounds the petitioner suggests that considerations of fairness and equity require that a newly imposed statute of limitations be construed as applying only prospectively and that the legislative history of the Act indicates an intent that section 4c should be so construed.

The respondents see no reasons based on fairness and equity for giving the words of the Act a meaning other than their natural and literal one. The public policy which dictated limitations on the enforcement by suit of rights of the Corporation is as applicable to those arising before the passage of the Act as to those thereafter. It is in the public interest that stale claims should not be litigated.

Chase Securities Corp. v. Donaldson, 325 U. S. 303, 314.

"Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost."

Guaranty Trust Co. of N. Y. vs. United States, 304 U. S. 126, 136.

"The statute of limitations is a statute of repose, designed to protect the citizens from stale and vexatious claims, and to make an end to the possibility of litigation after the lapse of a reasonable time. It has long been regarded by this Court and by the courts of New York as a meritorious defense, in itself serving a public interest."

Wilson vs. Iseminger, 185 U. S. 55, 60.

"The theory of this remedial act is that upon which all statutes of limitation are based,—a presumption that, after a long lapse of time, without assertion, a claim, whether for money or for an interest in land, is presumed to have been paid or released. This is a rule of convenience and policy, the result of a necessary regard to the peace and security of society."

Certainly the public policy, upon which a statute of limitations is founded, is not served by drawing a distinction between causes of action accruing prior to its passage and those arising thereafter, and allowing the former a longer period within which they may be prosecuted. Such a distinction would be warranted ordinarily only for constitutional reasons, which do not exist in this case. However, if Congress had desired to draw such a distinction, it had the power to do so. Its failure to make it creates a presumption that it intended none.

The Fred Smartley, Jr., 108 F. 2nd 603, 608 (CCA-4).

"We do not think that such a construction of the statute amounts to giving it a retroactive effect. . . . The fact that such rights may have accrued prior to the passage of the statute does not give to the owner, as a matter of right, an unlimited time within which to assert them; and there is just as much reason why Congress should apply a time limitation upon their assertion as upon the assertion of rights subsequently accruing. Under such circumstances the fact that Congress made no exception with respect to existing rights raises a strong presumption that it intended to make none."

Wrightman vs. Boone County, 88 F. 435, 436 (CCA-8).

"It provides that no *scire facias* shall issue to revive any judgment except within 10 years from its rendition.

> The legislature had the power to except from this broad prohibition judgments rendered before the enactment of the law, but it did not do so. The fact that it failed to make any exception raises a strong presumption that it intended to make none, and brings any exception that a court might be disposed to make into the forbidden category of judicial legislation."

We agree, of course, that statutes are ordinarily to be construed as prospective in effect and not retroactive. But a statute of limitations does not result in "the assigning of a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed," *Union P. R. Co. v. Laramie Stockyards Co.*, 231 U. S. 190, 199. It can never create a cause of action; it can only limit the future enforcement of rights which it does not otherwise affect. The rule of construction, therefore, does not have the force which it would have in a case where the statute, if applied retroactively, would affect changes in substantive rights, as in *United States F. & G. Co. v. Strothers Wells Co.*, 260 U. S. 306, "where the bond had already been executed, the work done, the respective rights of the parties settled, and the cause of action already in existence."

The Act itself indicates that their natural and literal effect should be given to the words of limitation.

We turn again to the language of Section 16 of the Act, that is:

> "The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation; *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

We think the proper inference from the express provision, that nothing in the Act should limit or extend any period of limitation otherwise applicable to claims against Commodity which became enforceable *against* the Corporation, is that the Act should limit or extend periods of limitation otherwise applicable to suits *by* the Corporation on claims of Commodity.

But the petitioner points out that there was no federal statute of limitations barring suits by Commodity, and that state statutes of limitations can not bar suits by the United States without the consent of Congress. It does not follow that suits by Commodity, or by the United States on claims of Commodity, would not be barred by a state statute. Indeed, although the question does not appear to have been determined by this Court, we suppose that Commodity's claims were subject to state statutes of limitations. Commodity was a Delaware corporation, which might sue or be sued. One of the ordinary incidents of the right to sue is that it must be exercised or otherwise be barred by limitations. Congress could, we assume, have granted Commodity immunity from the bar of any statute of limitations. In the absence of such a provision, the election to do business through a Delaware corporation should imply a consent to the application of a state statute to suits on its claims, though brought in the name of the United States, similar to the express consent to the application of section 4c to suits by the United States found in that section. See *United States v. Edgerton & Sons, Inc.*, 178 F. 2nd 763 (C.A.-2) holding that property of Commodity was subject to a warehouseman's lien. The Court there said, in part, at page 764:

> "When the United States conducts business transactions through a corporation, the tendency of recent de-

cisions is to hold that such corporation does not possess sovereign immunity unless expressly endowed with it. . . . Immunity from federal and state taxation was expressly conferred by the Act of March 8, 1938, 15 U.S.C.A. #713a-5. Thus the implication arises that the corporation possessed no other immunity, and this is fortified by the fact that in 1948 when it was succeeded by a corporation of the same name under a federal charter, immunity from liens was expressly reserved to the federal corporation."

Suits by Reconstruction Finance Corporation have been held subject to the defense of a state statute of limitations in

Reconstruction F. Corp. v. Foster Wheeler Corp., 70 F. S. 420;

Dorsey v. Reconstruction F. Corp., 101 F. S. 197, 199, aff. 197 F. 2nd 468 (C. A.-7).

Whether state statutes of limitations were applicable to claims of Commodity is, at least, doubtful. See Senate Report No. 1022 on the Act, U. S. Code Congressional Service, 1948, vol. 2, p. 2149, where in an analysis of the bill reference is made to "limitations * * * as to which the question of applicability has not been determined by the Supreme Court, such as the applicability of state and local statutes of limitations to Government corporations." Moreover, the use of the words "enforceable claims" indicates that Congress believed that claims by Commodity might become unenforceable as a result of the lapse of time.

In the light of the uncertainty as to the applicability of state statutes of limitations to claims by Commodity, we submit that the legislative history recited in the appellant's brief, pp. 26-32, indicates a purpose to settle the question by substituting a uniform period applicable in all states

on claims "by or against the Corporation". That period in the original Act was "four years after the right accrued on which suit is brought." As the petitioner concedes, there was no discussion of the meaning of the limitation provision during the debates on the floor. The statement quoted from the analysis of the bill that:

> "With respect to claims by the Corporation, the 4-year period of limitations will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the charter"

does not appear to have been brought to the attention of the Congress prior to the passage of the Act. Senator Aiken asked "unanimous consent to have printed in the Record that is to come out after the adjournment an analysis of the long range farm bill and the Commodity Credit Corporation Charter bill as they were reported by the conference committee" (94 Cong. Rec. Part 12, 80th Congress, 2nd Session—Appendix, pages 4408-4409).

Obviously, such a statement cannot be considered by the Court as a gloss on the language of Congress, merely because it was printed in an Appendix to the Congressional Record.

Moreover, even though debates in Congress may be looked to as throwing light on the purposes of legislation and the mischief it was intended to correct, they are not to be used to determine the meaning of words, as cases cited by the appellant show.

Humphrey's Executor v. United States, 295 U. S. 602, 625.

> "While the general rule precludes the use of these debates to explain the meaning of the words of the

statute, they may be considered as throwing light upon its general purposes and the evils which it sought to remedy."

United States v. St. Paul, M. & M. R. Co., 247 U. S. 310, 318.

"The remarks of Mr. Lacey, and the amendment offered by him, in response to an objection urged by another member during the debate, were in the nature of a supplementary report of the committee; and as they related to matters of common knowledge they may very properly be taken into consideration as throwing light upon the meaning of the proviso; and not for the purpose of construing it contrary to its plain terms, but in order to remove any ambiguity by pointing out the subject matter of the amendment. This is but an application of the doctrine of the old law, the mischief, and the remedy."

The words here in question are and should be read in their natural and ordinary sense. There are no adequate reasons for giving them any other meaning.

2. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST THE DEFENDANTS UPON WHICH RELIEF CAN BE GRANTED.

The complaint does not allege any failure on the part of the Handler or his agents to use due care in regard to the wool.

The complaint does allege, with a complete absence of any facts, a conclusion in the phraseology of the Handler's contract that the Handler did not provide proper storage or take such action as might be necessary to keep the wool in good condition.

Although the Federal Rules of Procedure do not require a prolix statement of facts, it would still seem that some notice of the factual basis of the claim is required.

Sheridan-Wyoming Coal Co. v. Krug, 168 F. (2d) 557;

Zimmerman v. National Dairy Products Corp., 30 F. Supp. 438.

Moreover, a Handler might fail to provide proper storage and fail to take necessary steps to keep the wool in good condition although acting reasonably and with due care.

Yet the Handler's Agreement provides (par. 15(b), R. 16) that "Commodity shall indemnify and save the Handler * * * harmless from any loss or damage to the wool after it is placed in the warehouse * * * provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool."

It would seem that an allegation of failure to exercise due care on the part of this defendant or his agents is, therefore, essential to state a claim for relief against the Handler and his sureties.

The complaint does not allege that any loss or injury to the wool was caused by the failure of the warehouseman to exercise such care in regard to the wool as a reasonably careful owner of similar goods would exercise.

Massachusetts General Laws (Ter. Ed.) C. 105, sec. 27 provides:

> "A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise; but not, in

> the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care."

It would seem, therefore, that an allegation of failure to exercise such care is essential to state a claim against this defendant.

Central States Grain Co-Operative v. Nashville W & E Corp., 48 F. (2d) 138, 140:

> "Neither negligence nor wilfulness being alleged, we may assume that the warehouse is not liable to appellant for the damage done to appellant's grain by reason of the fire."

WHEREFORE, the Respondents respectfully submit that the judgment below should be affirmed.

EDWARD C. PARK,
Attorney for Respondents.